

REPORTS
OF THE
PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSOURI

Volume 26 MPSC 3d

January 1, 2016 – December 31, 2016

Morris Woodruff
Reporter of Opinions

JEFFERSON CITY, MISSOURI
(2019)

PREFACE

This volume of the *Reports of the Public Service Commission of the State of Missouri* contains selected Reports and Orders issued by this Commission during the period beginning January 1, 2016 through December 31, 2016. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

The syllabi or headnotes appended to the Reports and Orders are not a part of the findings and conclusions of the Commission, but are prepared for the purpose of facilitating reference to the opinions. In preparing the various syllabi for a particular case an effort has been made to include therein every point taken by the Commission essential to the decision.

The *Digest of Reports* found at the end of this volume has been prepared to assist in the finding of cases. Each of the syllabi found at the beginning of the cases has been catalogued under specific topics which in turn have been classified under more general topics. Case citations, including page numbers, follow each syllabi contained in the Digest.

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THE COMMISSION

The following Commissioners served during all or part of the period covered by this volume

Daniel Y. Hall	Stephen M. Stoll
William P. Kenney	Maida Coleman
Scott Rupp	

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MAIDA COLEMAN	

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JOHN BORGMEYER
Litigation Counsel

CURTIS STOKES
Litigation Counsel

ADJUDICATION

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Chief Regulatory Law
Judge

RONALD D. PRIDGIN
Deputy Chief
Regulatory Law
Judge

NANCY DIPPELL Senior
Regulatory Law Judge

JOHN S. CLARK
Senior Regulatory Law
Judge

PAUL GRAHAM
Regulatory
Law Judge

CHARLES HATCHER
Regulatory Law Judge

Daniel Jordan
Kennard Jones
Michael Bushmann

Kim Burton

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In The Matter of Changes in Membership of)
The Relay Missouri Advisory Committee) **File No. TO-2016-0180**

TELECOMMUNICATIONS

§7. Jurisdiction and powers of the State Commission

For membership on the Missouri Relay Advisory Committee, the Commission voted to appoint a new member to the Hearing position, and extend a current member's existing appointment to the Speech Impaired position for a second three-year term.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In The Matter of Changes in Membership of)
The Relay Missouri Advisory Committee)

File No. TO-2016-0180

ORDER REGARDING CHANGING MEMBERSHIP OF THE RELAY MISSOURI ADVISORY COMMITTEE

Issue Date: January 13, 2016

Effective Date: January 13, 2016

At its January 13, 2016 agenda meeting, the Missouri Public Service Commission voted to make two changes in the membership of the Relay Missouri Advisory Committee. GayLynn Corrado was appointed to the hearing position, and Diane Wieland's existing appointment in the Speech Impaired position was extended for a second term.

THE COMMISSION ORDERS THAT:

1. GayLynn Corrado is appointed to a three-year term for the Relay Missouri Advisory Committee's Hearing position.
2. Diane Wieland's appointment to the Relay Missouri Advisory Committee's Speech Impaired position is extended for a second term of three years.
3. This order shall become effective when issued.
4. This file shall be closed January 14, 2015.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Woodruff, Chief Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri
on this 13th day of January, 2016.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Indian Hills)
Utility Operating Company, Inc., to Acquire)
Certain Water Assets of I.H. Utilities, Inc. and)
in Connection Therewith, Issue Indebtedness)
and Encumber Assets)

File No. WO-2016-0045

CERTIFICATES

§22. Restrictions and conditions

The Commission granted applications for a water company to transfer its assets, for a buyer to operate a water company, and for the buyer to encumber the assets as collateral for financing to improve service, subject to conditions related to contracting for services, accounting, and recordkeeping.

WATER

§2. Certificate of convenience and necessity

The Commission granted applications for a water company to transfer its assets, for a buyer to operate a water company, and for the buyer to encumber the assets as collateral for financing to improve service, subject to conditions related to contracting for services, accounting, and recordkeeping.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
February, 2016.

In the Matter of the Application of Indian Hills Utility)
Operating Company, Inc., to Acquire Certain Water)
Assets of I.H. Utilities, Inc. and in Connection)
therewith, Issue Indebtedness and Encumber Assets)

File No. WO-2016-0045

**ORDER APPROVING TRANSFER OF ASSETS
AND ISSUANCE OF CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: February 3, 2016

Effective Date: March 4, 2016

Background

Indian Hills Utility Operating Company, Inc. (Indian Hills) filed an application to acquire the assets of I.H. Utilities, Inc. (IHU) and to provide water to IHU's customers in Crawford County, Missouri. IHU serves about 700 customers in and around Indian Hills subdivision, a residential and recreational lake development near Cuba, Missouri.¹ To facilitate the purchase and upgrade of the water system, Indian Hills seeks to secure a loan by collateralizing the water system assets. In order to provide water to the public, Indian Hills will also require a Certificate of Convenience and Necessity from this Commission.

IHU is an administratively dissolved corporation and did not join in the application. But, through a Statutory Trustee, it is a signatory to the agreement to transfer the

¹ Application (EFIS Docket Item 1), paragraph 2; Staff Memorandum (EFIS Docket Item 9), page 2.

company.² The Commission notified IHU of these proceedings and allowed it an opportunity to respond to the application. The company did not respond. The Commission also notified the County Clerk and Commission of Crawford County and set a date for intervention. There was no request to intervene.

Transfer of Assets

Under Section 393.190.1, RSMo, the Commission must authorize the transfer or encumbrance of a regulated utility's assets, unless such transfer is shown to be detrimental to the public interest.³

In its memorandum, the Staff of the Commission states that IHU, the transferor, obtained a certificate from this Commission in 1964. IHU is now administratively dissolved, and the water system needs improvements. The owner does not have the ability or desire to maintain the system. Staff reports that it has logged about 10 customer complaints and inquiries per year for the last 3 years about IHU, which is a marked increase from previous years. Staff further informs the Commission that it has received comments regarding the proposed transfer from 22 IHU customers, and all of them support the transfer.

The president of Indian Hills, the transferee, has experience with water and sewer systems and is the president of Hillcrest Utility Operating Company, Inc. and Raccoon Creek Utility Operating Company, Inc. Both of those systems are regulated by the Commission and are undergoing improvements.

² Agreement for Sale of Water System, Appendix E, attached to Application.

³ *Environmental Utilities, LLC v. Public Service Commission of Missouri*, 219 S.W.3d 256,265 (Mo. App. W.D. 2007).

Financing

Indian Hills is requesting Commission authority to allow it to collateralize the IHU system's assets to raise up to \$1,500,000. Indian Hills will use the funds primarily for the construction of a ground storage water tank, remote operations equipment, hydro-pneumatic tank variable frequency pumping equipment upgrades, permanent chlorine disinfection, the repair of known water taps with leaks, a new pitless well head installation, and a new water main installation to connect the ground storage tank to the water distribution system. Toward the acquisition, Indian Hills will contribute \$175,000 in equity to pay for professional civil engineering design for drinking water improvements mandated by the Department of Natural Resources, and for the professional survey services required to support those construction designs. The company estimates that the total cost of purchase and improvements will be \$1,700,000.

Staff notes that there are additional equity investors⁴ and that they will be active participants in ensuring that the capital is used efficiently. These additional investors could also be the source of additional capital. Nevertheless, Staff foresees the necessity to remain informed about the proposed financing and suggests certain conditions toward that end.

Staff recommends approval of the transfer and financing with its suggested conditions. Staff states that the transfer is in the public interest and that Indian Hills has adequate technical, managerial, and financial capacity to operate, maintain, and improve the facilities and provide service to customers.

⁴ Indian Hills Utility Operating Company, Inc. is wholly owned by Indian Hills Utility Holding Company, Inc., which is wholly owned by First Round CSWR, LLC, which is managed by Central States Water Resources, Inc.

Certificate of Convenience and Necessity

Section 393.170, RSMo, requires water corporations to obtain authority from the Commission before providing water service to the public. The Commission may grant such authority through a Certificate of Convenience and Necessity (certificate) after determining that the service is necessary or convenient for the public service. In making this determination in previous applications, the Commission has applied the following five criteria:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and,
5. The service must promote the public interest.⁵

Decision

Both Staff and the company show that customers are currently being served by IHU. The need for continued water service is therefore evident. The above discussions show that Indian Hills has the managerial and financial ability to provide service. Based on the verified application and the verified recommendation of the Staff, the Commission independently finds that Indian Hills meets the criteria for the Commission to grant a certificate, concludes that granting the certificate to Indian Hills is necessary or convenient for the public convenience and will grant such authority. Finally, upon notice that the transfer of assets is complete, the Commission will cancel the certificate issued to IHU.

⁵ *In re Tartan Energy Company*, 3Mo.P.S.C. 173, 177 (1994).

Section 393.190.1, RSMo, requires a utility to seek Commission approval prior to transferring any property necessary and useful in the performance of its duties. Further, the Commission may not deny this transfer unless it is shown that the transfer is detrimental to the public interest.⁶ Indian Hills seeks such approval, and it has not been shown that the proposed transfer would be detrimental to the public interest. The Commission will therefore approve the proposed transfer, subject to those conditions suggested by Staff.

Staff also suggests that the Commission make no finding of the value of this transaction for ratemaking purposes, and make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded these financing transactions or any other matter pertaining to the approval of the transfer of assets and the granting of a certificate to Indian Hills, including expenditures incurred related to water systems in the certificated service area, in any later proceeding. The Commission also recognizes that the plant-in-service depreciation reserve, contribution in aid of construction (CIAC), and CIAC amortization balances, as calculated by the Staff, as of August 31, 2015, for purposes of rate base for plant-in-service and depreciation reserve are to be included in the books and records of Indian Hills.

Finally, the Commission notes that Indian Hills and any successors or assigns bear the burden of proof, in subsequent rate cases where the financing relevant to this case is at issue. At that time, the Commission may order a hypothetical capital structure and cost of capital consistent with similarly situated small water companies in Missouri, or as the Commission may otherwise find appropriate.

⁶ *Environmental Utilities, v. Public Service Commission of Missouri*, 219 S.W. 3d 256, 265 (Mo. App. W.D. 2007).

THE COMMISSION ORDERS THAT:

1. Indian Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity in the area served by I.H. Utilities, Inc.
2. Subject to the conditions set out in these ordered paragraphs, the transfer of assets from I.H. Utilities, Inc. to Indian Hills Utility Operating Company, Inc. is approved.
3. Indian Hills Utility Operating Company, Inc. is prohibited from closing on the assets or operating as a water utility unless it has operation, billing, and emergency answering arrangements (contracts) that can be in place, applicable to the specific service area, and exercised immediately upon closing of the assets.
4. Indian Hills Utility Operating Company, Inc. shall notify the Commission of closing of the I.H. Utilities, Inc.'s assets within 5 days after such closing.
5. I.H. Utilities, Inc. is authorized to cease providing service immediately after closing of the respective assets.
6. If closing of the I.H. Utilities, Inc. assets does not take place by March 27, 2016, Indian Hills Utility Operating Company, Inc. shall submit a status report by April 1, 2016.
7. If an initial status report must be submitted on April 1, 2016, then Indian Hills Utility Operating Company, Inc. shall file status reports every 30 days thereafter until closing takes place or Indian Hills Utility Operating Company, Inc. determines that the transfer will not occur.

8. Indian Hills Utility Operating Company, Inc. is authorized to operate using I.H. Utilities, Inc.'s existing tariff, on an interim basis, immediately after closing of the assets.

9. Indian Hills Utility Operating Company, Inc. shall file, within 30 days after closing of the assets, a tariff sheet, adopting I.H. Utilities, Inc.'s existing rules, rates and service charges.

10. Indian Hills Utility Operating Company, Inc. is authorized to use depreciation rates that are currently approved for I.H. Utilities, Inc., as shown in Attachment D to the Staff of the Commission's Memorandum.

11. Indian Hills Utility Operating Company, Inc. shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts.

12. Indian Hills Utility Operating Company, Inc. shall keep separate operations records particularly identifiable for the I.H. Utilities, Inc. system, including those for customer complaints/inquiries, vehicle mileage, equipment and telephone use records and customer accounts records.

13. Indian Hills Utility Operating Company, Inc. shall maintain time sheets, mileage logs and transportation expense, associated with Indian Hills Utility Operating Company, Inc. business, for all employees and officers, including Josiah Cox. Time sheets and mileage logs should specifically identify time and mileage by individual systems, the amount of time spent on construction projects and time spent on other activities such as non-regulated activities, including acquisition or merger activities, etc.

14. Indian Hills Utility Operating Company, Inc. shall track outside contractor expense for customer billing, customer calls, plant operation, mileage, equipment, labor, telephone and other office expenses for the Indian Hills Utility Operating Company, Inc.'s system, and for any other systems owned by its parent or by entities it owns, in a manner that would allow identification of costs that were incurred for Indian Hills business only.

15. Indian Hills Utility Operating Company, Inc. and I.H. Utilities, Inc. are responsible to pay the annual assessments that are due through Fiscal year 2015, in the amount of \$1,618.42, and for the Department of Natural Resources' fees, tax liabilities, or any other fees that could jeopardize title and control of the water utility assets.

16. Indian Hills Utility Operating Company, Inc. shall comply with all Commission rules including the filing of the annual report and keeping current on payments of the Commission's annual assessments.

17. Indian Hills Utility Operating Company, Inc. is authorized to collateralize its assets for purposes of the proposed financing arrangement.

18. Within 10 days after the issuance of any financing authorized by the order, Indian Hills Utility Operating Company, Inc. shall file a report including the amount of financing issued, date of issuance, stated return required, maturity date, redemption schedules or special terms, if any, use of proceeds, estimated expenses and the final executed financing agreement.

19. Indian Hills Utility Operating Company, Inc. and its affiliates, as identified in the Staff of the Commission's Memorandum, shall provide to the Staff of the Commission, upon reasonable written notice and during normal working hours, access to all books and record related to investments in Missouri regulated utility assets. This access to

information shall include, but not be limited to, information provided to or received from all proposed debt investors.

20. Indian Hills Utility Operating Company, Inc. shall file with the Missouri Public Service Commission all documentation required pursuant to the terms of the financing agreement. In the event that Indian Hills Utility Operating Company, Inc. is in violation of any terms of the financing agreement, it shall file a report with the Commission indicating its plan to cure such violation. If such violation is waived, then Indian Hills Utility Operating Company, Inc. shall indicate why the violation is waived and how long the waiver shall be effective.

21. The proceeds from the proposed financing shall be used only for the acquisition of I.H. Utilities, Inc.'s water utility assets, and the proposed tangible improvement to the water system that can be booked to plant in service for purposes of ratemaking.

22. Indian Hills Utility Operating Company, Inc. shall notify the Commission immediately if there are any changes to the current investment structure of investors in Indian Hills Utility Operating Company, Inc. or its affiliate investors. This notice shall include all documents executed to complete such investment structure or ownership changes.

23. In the event of default on the Indian Hills Utility Operating Company, Inc. loan, the certain debt investor(s) shall file a written plan with the Commission on how it will ensure continued funding necessary to maintain safe and adequate service for the Indian Hills Utility Operating Company, Inc.'s customers.

24. Within 30 days of the first billing sent to customers, Indian Hills Utility Operating Company, Inc. shall provide to the Staff of the Commission a sample of 10 such billing statements.

25. Indian Hills Utility Operating Company, Inc. shall provide an example of its communication efforts with the customers regarding the acquisition of the system and methods by which customers can contact Indian Hills Operating Company, Inc.

26. This order shall become effective on March 4, 2016.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Jones, Senior Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Laclede Gas Company's Application)
for Authority to Issue and Sell First Mortgage Bonds,)
Unsecured Debt and Preferred Stock, and to Issue)
Common Stock and Receive Capital Contributions)

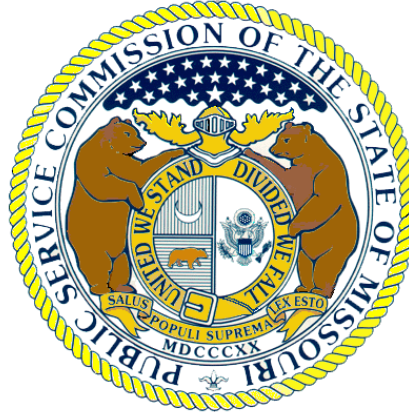
File No. GF-2015-0181

SECURITY ISSUES

§69. Financing methods and practices generally

Statute governing a public utility's issuance of securities restricts the use of proceeds from such financing to specified purposes, and requires the public utility to set forth which of those specified purposes those proceeds will apply to. Flexibility to use the financing for unspecified purposes is not a statutorily specified purpose.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Laclede Gas Company's)
Verified Application to Re-Establish and Extend)
the Financing Authority Previously Approved)
by the Commission.)

Case No. GF-2015-0181

REPORT AND ORDER

Issue Date: February 10, 2016

Effective Date: March 11, 2016

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Laclede Gas Company's	)	
Verified Application to Re-Establish and Extend	)	
the Financing Authority Previously Approved	)	<u>Case No. GF-2015-0181</u>
by the Commission.	)	

REPORT AND ORDER

APPEARANCES

Rick Zucker, Esq., Associate General Counsel, Laclede Gas Company, 700 Market Street, 6th Floor, St. Louis, Missouri 63101, for Laclede Gas Company.

Marc Poston, Esq., Deputy Public Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Jeff Keevil, Esq., Senior Staff Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Ronald D. Pridgin, Deputy Chief.**

Procedural History

On April 15, 2015, Laclede Gas Company (“Laclede”) applied to the Commission for financing authority of \$550 million over the period ending September 30, 2018. The Staff of the Commission recommends the Commission approve financing authority of only \$300 million. Over Staff’s objection, the Commission granted Laclede temporary financing authority on June 24, 2015.

The Commission held an evidentiary hearing on November 18, 2015. Parties filed briefs on December 18, 2015, and reply briefs on January 8, 2016.

List of Issues

1. What amount of financing should be authorized by the Commission for Laclede Gas Company through September 30, 2018?
2. What conditions should the Commission place on Laclede Gas Company’s financing authority?

Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Findings of Fact

1. Laclede Gas Company ("Laclede") is a public utility incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101.¹

2. Laclede is a gas corporation subject to the jurisdiction of the Commission.²

3. Laclede is primarily engaged in the business of distributing and transporting natural gas to customers in both the eastern and western portions of the State of Missouri. Laclede serves customers in the City of St. Louis and ten counties in Eastern Missouri. Laclede also serves customers under the name Missouri Gas Energy ("MGE") in the City of Kansas City and thirty counties in western Missouri.³

4. Laclede requests Commission authorization to issue \$550 million of financing. However, that request includes \$250 million it has no plans to issue.⁴

5. In opening statements, Laclede's attorney stated the extra authority would allow the company some flexibility to react or adjust to changing circumstances.⁵

¹ Ex. 1, p. 1.

² *Id.* at p. 2.

³ *Id.* at pp. 1-2.

⁴ Ex. 11, p. 2, 23. Although the \$300M Laclede plans to issue was filed as highly confidential, Laclede has waived that confidentiality by discussing it in a public forum. See, e.g., Tr. Vol. 2, p. 24.

⁵ Tr. Vol. 2, p. 31.

6. Laclede anticipates approximately \$550 million in capital expenditures but expects to cover \$250 million of this amount through operating cash flow rather than through financing.⁶

7. Laclede's rating agency presentation confirms the company only expects to issue \$300 million in financing between now and 2018. This financing would be for the purposes of refinancing short-term debt, funding capital expenditures, and retiring long-term debt scheduled to mature.⁷

8. This is in line with Laclede's projection, which was that Laclede's currently-known financing needs are less than the amount of the authority requested.⁸

9. Missouri's other utility companies request authority for financings they actually plan to issue that do not include financings that are unplanned or cannot be verified.⁹

10. Laclede can request financing as often as it needs to, and Laclede has funding options other than long-term financing.¹⁰

11. Prior financing authority the Commission gave to Laclede has proven to be excessive. For example, \$370 million of the financing allowed in Laclede's prior financing case, File No. GF-2009-0450, remained unused as of the beginning of this case.¹¹

12. Prior financing authority for Laclede has resulted in no detriment to the company or its customers.¹²

⁶ *Id.*, p. 78.

⁷ Ex. 11, pp. 2-3; *Id.* at DM-r2, p. 9; Tr. Vol. 2, pp. 75-76.

⁸ Ex. 2, pp. 13-14; Ex. 4, p. 15.

⁹ Ex. 11, p. 8.

¹⁰ Tr. Vol. 2, p. 113.

¹¹ Ex. 11, p. 4.

¹² Tr. Vol. 2, p. 129; Ex. 11, p. 11.

13. The amount of financing Staff recommends the Commission approve in this case - \$300 million – would be a relatively modest amount compared to the capitalization approved in previous Laclede cases, particularly considering the company has significantly increased in size with the acquisition of MGE.¹³

14. Laclede did not object to the conditions on the financing authority that Staff proposed in its testimony.¹⁴

Conclusions of Law

1. The Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested-to subject matter.¹⁵

2. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.¹⁶

3. Testimony need not be refuted or controverted to be disbelieved by the Commission.¹⁷

4. The Commission determines what weight to accord to the evidence adduced.¹⁸

¹³ Ex. 4, p. 4.

¹⁴ Tr. Vol. 2, pp. 40-41.

¹⁵ Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 389 (Mo. App. 2005).

¹⁶ *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).

¹⁷ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

¹⁸ *Id.*

5. The Commission may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it.¹⁹

6. The Commission may evaluate the expert testimony presented to it and choose between the various experts.²⁰

7. Where the evidence conflicts, the Commission determines which evidence is most credible. No law requires the Commission to expound upon which portions of the record the Commission accepted or rejected²¹

8. The Commission is not bound by *stare decisis* based on its prior decisions, and departing from a previous policy is not unlawful as long as the Commission's decision is not otherwise arbitrary or unreasonable.²²

9. The power of gas corporations to issue stocks, bonds, notes and other evidences of indebtedness and to create liens upon their property situated in this state is a special privilege, *the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law* and under such rules and regulations as the commission may prescribe.²³

10. Laclede may encumber its property²⁴ and issue bonds or other debt instruments "reasonably required for" purposes related to its property, service, or certain

¹⁹ *Id.*

²⁰ *Associated Natural Gas, supra*, 706 S.W.2d at 882.

²¹ *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

²² *State ex rel. Laclede Gas Co. v. Public Service Commission*, 392 S.W.3d 24, 36-37 (Mo. App., W.D. 2012).

²³ Section 393.180 RSMo 2000 (emphasis added).

²⁴ Section 393.190.1, RSMo. 2000.

payments²⁵, even if such debt is otherwise “reasonably chargeable to operating expenses or to income.” But Laclede must have “first secured from the commission an order authorizing it so to do” and “stating the purposes to which the issue or proceeds thereof are to be applied[.]”²⁶ If Laclede meets that statutory standard, then the Commission may issue such an order if the financing is not detrimental to the public.²⁷

Decision

The Commission does not wish to micromanage any utility. However, Missouri law requires the Commission to protect ratepayers by limiting a utility’s financing authority to purposes specified in the financing statute.

In Laclede’s prior financing case, File No. GR-2009-0450, the Commission denied \$82 million of Laclede’s financing request, saying “. . . flexibility is neither a purpose nor an amount. Flexibility is how fast Laclede uses its authorization to address market conditions.”²⁸ While the Commission is not bound by its previous decisions, in the interest of regulatory consistency, certainty, and predictability, a departure from previous policy should be reasonable and not arbitrary. If the Commission determines it will not follow a prior ruling, it should set forth its reasons, which may include policy considerations or

²⁵ Specifically, the allowable purposes include: “. . . the acquisition of property, the construction, completion, extension or improvement of its plant or system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, . . .” Section 393.200.1 RSMo 2000.

²⁶ Section 393.200.1 RSMo 2000.

²⁷ *State ex. rel. City of St. Louis v. PSC*, 73 S.W.2d 393, 400 (Mo. 1934).

²⁸ *In the Matter of Laclede Gas Company's Verified Application for Authority to Issue and Sell First Mortgage Bonds, Unsecured Debt and Preferred Stock, in Connection with a Universal Shelf Registration Statement, to Issue Common Stock and Receive Capital Contributions, to issue or accept Private Placement Securities, and to Enter Into Capital Leases, all in a Total Amount Not to Exceed \$600 Million*, Report and Order, File No. GF-2009-0450 (June 16, 2010).

different legal perspectives or an explanation of how the prior ruling is distinguishable from the current case. The Commission is faced with the same question in this case as in Laclede's previous case and adopts its prior conclusion; flexibility to respond to rapidly changing market conditions is not a specified purpose allowed under the law.

Thus, the appropriate amount for the Commission to authorize in this case is the \$300 million Laclede has specified to rating agencies that it plans to issue. This financing would be for the purposes of refinancing short-term debt, funding capital expenditures, and retiring long-term debt scheduled to mature. These purposes are necessary "for the improvement or maintenance of Laclede's service, or for the discharge or lawful refunding of its obligations."²⁹ And, in the opinion of the Commission, the money, property or labor to be procured or paid for by this financing is or has been reasonably required for the purposes specified in this order.³⁰

Finally, this Commission's previous financing authorizations for Laclede were not detrimental to the public interest. Granting \$300 million in authority in this case would be a modest grant compared to Laclede's previous financing authority, especially considering the recent expansion of Laclede through its acquisition of MGE. Thus, granting \$300 million of financing in this case is not detrimental to the public. Laclede may return to the Commission when it needs financing authority for purposes allowed by law.

This order should not reflect, and does not reflect, on the Commission's opinion of Laclede's credit-worthiness or investment-worthiness. The authorization is simply tied, per Section 393.200, to the amount of financing Laclede plans to issue. The Commission

²⁹ Section 393.200.1 RSMo.

³⁰ *Id.*

certainly could approve additional financing if Laclede makes a request for a specified amount supported by a specified purpose as the law requires.

Finally, the Commission finds the conditions recommended by Staff in its testimony to be reasonable. The Commission notes that Laclede does not oppose them. Thus, the Commission will impose those conditions.

THE COMMISSION ORDERS THAT:

1. Laclede Gas Company ("Laclede" or "Company") is authorized to issue registered securities (first mortgage bonds, unsecured debt and preferred stock), issue common stock and receive capital contributions, issue and accept private placement investments, and to enter into capital leases in an aggregate amount not to exceed \$300 million at any time, or from time to time, through September 30, 2018, provided that the Company shall not be authorized to use any portion of the \$300 million for any purpose other than for the exclusive benefit of Laclede Gas Company's regulated operations, as such purposes are specified in Section 393.200 RSMo.

2. The total amount of the long-term debt, capital leases, and preferred stock issued and outstanding under such authorization shall not, at any time during the period covered by this authorization, exceed the lesser of the value of Laclede's rate base or 65 percent of its total capitalization, as such conditions are defined in Case Nos. GM-2001-342 and GF-2007-0220.

3. The current Commission Authority under Case No. GF-2009-0450, which was extended in Case No. GF-2013-0085, shall be superseded by the Authority granted in Case No. GF-2015-0181.

4. The interest rate for any debt issuance covered by the Authority shall not be greater than a rate that is consistent with similar securities of comparable credit quality and maturities issued by other issuers.

5. If and when individual debt securities are issued under this Authority, the Company shall submit a verified report to the Commission's Budget and Fiscal Services Department (formerly the Internal Accounting Department) documenting such issuance, the use of any associated proceeds and the applicability and measure of fees under Section 386.300.2 RSMo.

6. Laclede Gas Company shall also be required to file with the Commission all final terms and conditions on this financing including, but not limited to, the aggregate principal amount to be sold or borrowed, price information, estimated expenses, portion subject to the fee schedule and loan or indenture agreement concerning each issuance.

7. Laclede Gas Company shall submit to Staff and The Office of the Public Counsel any information concerning communications with credit rating agencies concerning individual debt securities issued under this Authority.

8. Laclede Gas Company shall file with the Commission any credit rating agency reports issued on the Company, the Company's debt issuances, or on the Laclede Group.

9. Nothing in the Commission's order shall be considered a finding by the Commission of the value of these transactions for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their results in cost of capital, in any later proceeding.

10. In seeking a renewal of the Authority granted in this case, Laclede Gas Company and Staff shall operate under the general time frames set forth for financing cases in the 2004 case management roundtable project.

11. This Report and Order shall become effective on March 11, 2016.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Rupp, and Coleman,
CC., concur;
Kenney, C., dissents, with separate
dissenting opinion to follow;
and certify compliance with the provisions
of Section 536,080, RSMo.

Dated at Jefferson City, Missouri,
on this 10th day of February, 2016.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Laclede Gas Company's)
Verified Application to Re-Establish and Extend)
the Financing Authority Previously Approved by)
the Commission.)

Case No. GF-2015-0181

DISSENTING OPINION OF COMMISSIONER WILLIAM P. KENNEY **IN THE REPORT AND ORDER ISSUED FEBRUARY 10, 2016**

I respectfully dissent from the majority opinion in this case because I believe granting the full amount of financing Laclede requested is reasonable and necessary as required by statute, allows ample regulatory protection and constitutes good public policy for the Commission to follow in the future. Under Section 393.200, RSMo, Laclede is allowed to seek \$1 billion dollars in financing authority, but in this case Laclede requested only half of that amount per its reasonable interpretation of the decision in the prior financing case (2010 Order).¹ Laclede presented a justifiable purpose for seeking a certain amount in financing, has a record of using the authority with restraint and should have been given authorization to finance \$550 million. I think the action by the majority interferes with Laclede's management, creates uncertainty for the utility, and encourages regulatory interference rather than merely regulatory oversight.

The Commission is not bound by stare decisis.² In this case, I do not believe the reliance on the purpose of "flexibility" warranted the outcome of significantly reducing

¹ Commission File No. GF-2009-0450.

² *State ex rel. Ag Processing Inc. v. Missouri PSC*, 120 S.W.2d 732, 736 (Mo. banc 2003).

the amount of financing authority Laclede receives from the Commission. The majority states, “[i]f the Commission determines it will not follow a prior ruling, it should set forth its reasons, which may include policy considerations or different legal perspectives or an explanation of how the prior ruling is distinguishable from the current case.”³ I do not believe the majority decision is consistent with previous treatment of Laclede’s financing requests and I think the reliance on the 2010 Order is misplaced. Additionally, there are multiple public policy reasons to allow Laclede the total amount of financing requested.

Laclede has been a good steward of the financing it has received and currently has an A- credit rating. Laclede has maintained a strong credit rating through its recent financing cases.⁴ Laclede had an A credit in 2007 and an A - credit rating in 2010.⁵ During the 2007 and 2010 cases, Laclede was granted authority to finance \$500 million and \$518 million, respectively.⁶ Staff testified that there has been no harm to the public as a result of granting Laclede large amounts of financing authority.⁷ In 2010, Laclede did not use all of its authorized financing.⁸ The majority uses this fact as proof of excess financing authority, but I view it as proof of the Company’s good stewardship.⁹ In this case, there is sufficient reason to continue to treat Laclede as the Commission has in those past cases by allowing it to access more than \$500 million in financing authority.

Instead, the majority only allowed Laclede to finance \$300 million instead of the \$550 million it requested. That decision was made even though Laclede has doubled in

³ EFIS Item No. 74, Report and Order page 8.

⁴ Tr. Page 129, lines 8-9.

⁵ Tr. Page 41-42, lines 24-25; Tr. Page 42, lines 1-5.

⁶ Tr. Page 62 lines 6-7.

⁷ Ex. 11, page 11, line 11.

⁸ Ex. 11 page 4.

⁹ Ex. 11, page 4, Report and Order, page 5.

size from a merger with Missouri Gas Energy, and tripled its capital expenditure budget since the last financing case in 2010.¹⁰ That decision was made, in part, because that is the amount Laclede projected financing in a presentation to a rating agency. The \$300 million presented to the rating agency represents the middle point of the range of probable and possible outcomes that resulted from Laclede's financial forecasting.¹¹ This amount can change due to many variables including a change in capital expenditures or a change in accounting rules.¹² Some of those are out of the control of the utility but necessary for the utility to consider in its plans.

The Commission should not substitute its decision for the management decisions of a utility company. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs legally, within the appropriate regulations and does not harm the public.¹³ If Laclede believes it should build in an amount to take advantage of market conditions or respond to changed accounting rules by making changes to their plants, then the Commission should not interfere with that decision or micro-manage the Company. This is especially true since Laclede has repeatedly demonstrated credibility in prudently using prior finance approval. Laclede should not be punished as a result of using less than the financing authority it has been granted in the past. Even if Laclede sold all \$550 million worth of bonds, it would still have an investment grade credit rating.¹⁴

¹⁰ Tr. Vol 2 page 12.

¹¹ Tr. Vol 2, page 76 line 25 – page 77, lines 1-4.

¹² *Id.*

¹³ *State ex rel. Harline v. Public Service Commission of Mo.* 343 S.W.2d 177, 182 (Mo.App.1960).

¹⁴ Ex. 11, Murray Rebuttal page 22, lines 6-9.

Prudent management requires that provisions be made for uncertainties of future markets and other circumstances.¹⁵ Allowing Laclede access to more financing prevents additional regulatory costs because the company would not have to file additional requests to respond to market conditions or changes in management decisions. The requested amount gives the Company the ability to determine the appropriate mix of financing alternatives that is best calibrated to benefit customers based on changing market conditions.¹⁶ Laclede convincingly argued that the \$300 million it told the financial community it had plans to spend was only an estimate. It is possible that Laclede will have to exercise the total amount of financing authority requested in the event there are unexpected and dramatic changes in the capital markets, revisions in accounting rules such as those relating to operating versus capital leases, and unexpected changes in anticipated financing requirements.¹⁷ The Company should not be penalized for reasonable estimates given to the financial community. It is reasonable to give a utility enough authority to respond to contingencies that arise in the financial market that could benefit ratepayers. This is particularly true when some of the variables, such as changes in tax codes or accounting requirements, are outside their control. The Commission should not interfere with utility management decisions.

The result of this case may send a negative signal to the financial markets. In 1993, the financing amount as a percent of total capitalization for Laclede was approximately 26%; in 1995 it was approximately 29%; in 2000 it was approximately 50%; and the amount Laclede requested in this case would have been approximately

¹⁵ Ex 2, Rawlings Direct page 15, lines 9-22.

¹⁶ Ex 2, Rawlings Direct page 15, lines 18-22.

¹⁷ Ex 2, Rawlings Direct page 14, lines 4-9.

25% of total capitalization.¹⁸ If the percentages of 26-29% were reasonable in the past, a lower one as presented in this case should also be reasonable. A different result leads to inconsistent analysis in Commission cases and creates regulatory uncertainty.

The majority asserts that Laclede can request further financing as often as it needs to in the future. However, this would require a new filing and create a regulatory time constraint that would make it difficult for the Company to take advantage of positive financial opportunities and would consume additional time and resources. In this case, Laclede filed *Notice of Intent to File an Application for Approval of Financing Authority*¹⁹ on February 3, 2015 and filed its application on April 15, 2015.²⁰ On June 8, 2015, Staff filed its recommendation.²¹ A hearing was held on November 18, 2015²² and the Report and Order was issued on February 20, 2016.²³ In total, it took this finance case over one year from start to finish, and ten months from the day the application was filed. This timing is one month less than the time it takes to consider a general rate case proceeding where all relevant factors in ratemaking, including the prudence of a utility's financing decisions, are considered. While it is true that the Company may request more financing in a new case, it is burdensome on the Company, and ultimately the ratepayers, due to the additional use of necessary resources and length of time it takes when it is contested and the potential lost benefits of being unable to take advantage of the financial markets. Even when it is not contested like this case, in the bond markets two months can be an eternity.

¹⁸ Ex. 11, Murray Rebuttal page 10, lines 8-15, page 9, lines 17-18 page 4, line 6.

¹⁹ EFIS Item No 1 in GF-2015-0181.

²⁰ EFIS Item No. 2 in GF-2015-0181.

²¹ EFIS Item No. 6 in GF-2015-0181.

²² EFIS Item Nos. 53, 54 in GF-2015-0181.

²³ EFIS Item No. 74 in GF-2015-0181.

Laclede should have been given authority to finance \$550 million in this case as that decision is reasonable and necessary as required by statute, and constitutes good public policy for the Commission to follow in the future.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'WPK', followed by a horizontal line.

William P. Kenney
Commissioner

Dated this 9th day of March, 2016
at Jefferson City, Missouri

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

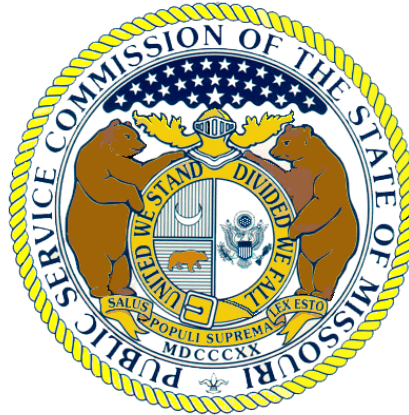
In the Matter of Kansas City Power & Light	)	
Company's Filing for Approval of Demand-Side	)	File No. EO-2015-0240
Programs and for Authority to Establish a	)	
Demand-Side Programs Investment Mechanism	)	
In the Matter of KCP&L Greater Missouri Operations	)	
Company's Filing for Approval of Demand-Side	)	File No. EO-2015-0241
Programs and for Authority to Establish a	)	
Demand-Side Programs Investment Mechanism	)	

RATES

§23. Efficiency of operation and management

The Commission approved programs under the Missouri Energy Efficiency Initiative, including a custom rebate program, with variances from the Commission's regulations for terminating programs.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Kansas City Power & Light)
Company's Filing for Approval of Demand-Side)
Programs and for Authority to Establish a)
Demand-Side Programs Investment Mechanism)

File No. EO-2015-0240

In the Matter of KCP&L Greater Missouri Operations)
Company's Filing for Approval of Demand-Side)
Programs and for Authority to Establish a)
Demand-Side Programs Investment Mechanism)

File No. EO-2015-0241

REPORT AND ORDER

Issue Date: March 2, 2016

Effective Date: March 12, 2016

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	
Company's Filing for Approval of Demand-Side	)	<u>File No. EO-2015-0240</u>
Programs and for Authority to Establish a	)	
Demand-Side Programs Investment Mechanism	)	

In the Matter of KCP&L Greater Missouri Operations	)	
Company's Filing for Approval of Demand-Side	)	<u>File No. EO-2015-0241</u>
Programs and for Authority to Establish a	)	
Demand-Side Programs Investment Mechanism	)	

REPORT AND ORDER

APPEARANCES

KANSAS CITY POWER & LIGHT COMPANY and KCP&L GREATER MISSOURI OPERATIONS COMPANY:

Robert J. Hack and **Roger W. Steiner**, Kansas City Power & Light Company,
1200 Main Street, 16th Floor, Kansas City, Missouri 64105.

James W. Fischer, Fischer & Dority, 101 Madison St., Suite 400, Jefferson City,
Missouri 65101.

BRIGHTERGY, LLC:

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Main St., 6th Floor, Kansas City, Missouri 64108.

David L. Woodsmall, Woodsmall Law Office, 308 E. High St., Suite 204,
Jefferson City, Missouri 65101.

MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT- DIVISION OF ENERGY:

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NATURAL RESOURCES DEFENSE COUNCIL:

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UNITED FOR MISSOURI, INC.:

David C. Linton, 314 Romaine Spring View, Fenton, Missouri 63026.

NATIONAL HOUSING TRUST, WEST SIDE HOUSING ORGANIZATION, and EARTH ISLAND INSTITUTE d/b/a RENEW MISSOURI:

Andrew J. Linhares, 910 E. Broadway, Suite 205, Columbia, Missouri 65201.

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI:

L. Russell Mitten, Brydon Swearengen & England, PC, 312 East Capitol Avenue, Jefferson City, Missouri 65102.

MISSOURI INDUSTRIAL ENERGY CONSUMERS:

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OFFICE OF THE PUBLIC COUNSEL:

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STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Kevin A. Thompson, Chief Staff Counsel, **Robert S. Berlin**, Deputy Staff Counsel, **Marcella Mueth**, Assistant Staff Counsel, **Nicole Mers**, Assistant Staff Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

I. Procedural History

On August 28, 2015, Kansas City Power and Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”, and collectively, the “Company”) applied to the Missouri Public Service Commission (“Commission”) for approval of demand-side programs (“Cycle 2 programs”) and for authority to establish a demand-side investment mechanism (“DSIM”) as contemplated by the Missouri Energy Efficiency Investment Act (“MEEIA”) and the Commission’s implementing regulations. The Company also filed revised tariff sheets under Tariff Tracking Nos. YE-2016-0072, YE-2016-0073 and YE-2016-0074 to implement the proposed Cycle 2 MEEIA plan and replace the Company’s Cycle 1 MEEIA programs, which were set to expire on December 31, 2015. The revised tariff sheets had an effective date of January 1, 2016, but the Company subsequently extended that effective date until April 1, 2016.

Upon the filing of timely applications, the Commission granted intervention to the following parties: Brightergy, LLC (“Brightergy”), Natural Resources Defense Council, Missouri Department of Economic Development – Division of Energy (“Division of Energy”), United for Missouri, Inc., Earth Island Institute d/b/a Renew Missouri, National Housing Trust, West Side Housing Organization, Missouri Industrial Energy Consumers, and Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). On December 2, 2015, the Office of the Public Counsel filed a motion to reject the revised tariff sheets, on which the Commission withheld a ruling and which remains pending.

On November 23, 2015, the Company, Commission Staff, Office of the Public Counsel, Division of Energy, National Housing Trust, West Side Housing Organization, Natural Resources Defense Council, Earth Island Institute d/b/a Renew Missouri, and

United for Missouri, Inc. signed and filed a *Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings* (“Stipulation”) in which those signatory parties¹ reached agreement on all issues related to the Company’s Cycle 2 MEEIA programs and the associated demand-side programs investment mechanism. Brightergy objected to the Stipulation, so it becomes a joint position statement of those parties.²

The evidentiary hearing was held on January 12, 2016, where the parties presented evidence relating to the unresolved issues previously identified by the parties.³ During the evidentiary hearing held at the Commission’s offices in Jefferson City, Missouri, the Commission admitted the testimony of seven witnesses and received 16 exhibits into evidence. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on February 5, 2016, and the case was deemed submitted for the Commission’s decision on that date.⁴

II. Discussion

In a recent report and order concerning the MEEIA plan of Union Electric Company d/b/a Ameren Missouri, the Commission described the historical background of the MEEIA law in Missouri, so the Commission will not repeat that history in this order.⁵ With regard to the Company’s application, all the signatory parties to the Stipulation, with the exception of Brightergy, take the position that the Commission should approve the Cycle 2 programs

¹ Missouri Industrial Energy Consumers and Union Electric Company d/b/a Ameren Missouri are also parties to this matter, but they did not oppose the Stipulation and did not submit a statement of position on the disputed issues, so they will not be discussed further.

² Commission rule 4 CSR 240-2.115(2)(D).

³ Transcript, Vol. 3. All subsequent citations to the Transcript will be to Vol. 3 unless otherwise indicated.

⁴ “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

⁵ See, Report and Order, *In the Matter of Union Electric Company d/b/a Ameren Missouri’s 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, issued October 22, 2015, p. 5-7.

and DSIM for the Company consistent with the terms of the Stipulation. Brightergy only disagrees with the Stipulation regarding the following two provisions: 1) a change in the rebate incentive structure for the commercial and industrial custom rebate program (“Custom Rebate Program”), which provides a rebate for installing or replacing equipment or systems with higher energy efficiency, and 2) a change in the procedure by which the Company can discontinue all approved Cycle 2 programs (which the Stipulation refers to as “regulatory flexibility”).

Other than the two provisions listed above, Brightergy does not object to the resolution of the other issues consistent with the Stipulation. The signatory parties urge the Commission to adopt the proposed resolution of all issues as provided in the Stipulation. Under Commission rule 4 CSR 240-2.115(2)(D) the Commission cannot approve the Stipulation once a party objected to it, but the Commission can consider the Company’s amended MEEIA plan that is contained in the Stipulation document and appendices (the “Amended MEEIA Plan”).

The three disputed issues identified by the parties for determination by the Commission are: 1) should the Commission approve the Custom Rebate Program in the Amended MEEIA Plan over the objection of Brightergy; 2) should the Commission approve the regulatory flexibility provisions in the Amended MEEIA Plan over the objection of Brightergy; and 3) should the Commission approve the other Cycle 2 programs and DSIM contained in the Amended MEEIA Plan?

A. Custom Rebate Program

For both Cycles 1 and 2, the Company’s Custom Rebate Program provides a rebate to business customers for installing qualifying high-efficiency equipment or systems and

replacing or retrofitting HVAC systems, motors or pumps with higher energy efficient equipment.⁶ In Cycle 1, the incentive was structured as the lesser of the buy down to a two-year payback or 50% of the incremental cost of the higher efficiency equipment.⁷ By the end of Cycle 1, the average rebate paid was 22 cents/kWh, which contributed to the Company exceeding its Cycle 1 budget by more than 120%.⁸ In Cycle 2, the Company proposed a flat rate incentive of 10 cents per first year kWh saved with a cap of \$500,000 per customer per year.⁹ The Company has the ability to adjust the Cycle 2 incentive levels from a minimum of 6 cents per kWh to a maximum of 40 cents per kWh in order to meet program objectives, if necessary.¹⁰

Brightergy argues that the proposed Cycle 2 Custom Rebate Program doesn't meet the statutory goal of achieving all cost-effective demand-side savings because the proposed reduction in program incentives will result in lower demand and increased free ridership.¹¹ Brightergy says that the Cycle 2 program will not drive the same level of investment because the payback time will be increased, which is a definitive factor in business efficiency investments. Brightergy suggests that the Commission should reject the Cycle 2 Custom Rebate Program in the Amended MEEIA Plan and continue the Cycle 1 custom rebate program because the Cycle 1 program is cost-effective, increases efficiency investment, and meets statutory requirements.

⁶ Ex. 102, Winslow Direct, p. 2.

⁷ Ex. 102, Winslow Direct, p. 3.

⁸ Ex. 102, Winslow Direct, p. 4-5.

⁹ Ex. 102, Winslow Direct, p. 7.

¹⁰ Transcript, p. 119, 188.

¹¹ The term "free riders" refers to business customers who receive a rebate for investing in an energy efficiency project, but would have made that investment anyway without the rebate because the energy savings alone would justify the investment. Transcript, p. 169.

The evidence shows, however, that programs with a flat incentive rate structure, like the Cycle 2 Custom Rebate Program, can achieve savings targets and keep program free ridership low.¹² Ameren Missouri's flat rate incentive custom rebate program (6 cents per first year kWh savings for lighting and 7 cents per kWh for non-lighting) had program costs that were 8.6% less than the budgeted amount, but achieved 75.3% higher net benefits and 42.1% higher energy savings than planned.¹³ In contrast, the Company's Cycle 1 custom rebate program experienced program costs of nearly double the planned costs, but achieved actual net benefits of 10.3% less than planned.¹⁴ This demonstrates that, contrary to Brightergy's assertion, a higher rebate level does not necessarily mean that greater benefits will result.¹⁵ The Company's proposed Custom Rebate Program in the Amended MEEIA Plan is designed to both increase net benefits and lower program costs.¹⁶

There was also evidence that the proposed flat rate incentive is easy to understand and ties the customer incentive directly to the amount of kWh saved instead of project cost, which ensures that projects are rebated in an equitable manner not influenced by contractor costs.¹⁷ Although all MEEIA programs will have some level of free ridership, the Company has an economic interest in minimizing free ridership because retrospective evaluation, measurement and verification ("EM&V") in the Amended MEEIA Plan reduces the Company's earnings opportunity if those levels are too high.¹⁸ In addition, the evidence shows that the Custom Rebate Program will not negatively impact non-profit customers,

¹² Ex. 102, Winslow Direct, p. 11.

¹³ Ex. 202, Rogers Surrebuttal, Schedule JAR-SR-2.

¹⁴ Ex. 202, Rogers Surrebuttal, Schedule JAR-SR-2.

¹⁵ Transcript, p. 208; Ex. 202, Rogers Surrebuttal, p.10.

¹⁶ Ex. 202, Rogers Surrebuttal, p.10.

¹⁷ Ex. 102, Winslow Direct, p. 8

¹⁸ Transcript, p. 121.

such as schools.¹⁹ The companies have proposed a Small Business Direct Install program, which could be used by non-profits, that covers up to 70% of installation costs.²⁰ Under the new Cycle 2 program, many lighting projects that would have been under the old Cycle 1 custom rebate program will be moved to a different prescriptive program that offers higher incentives of up to 20 cents per kWh.²¹ Navitas, a trade ally that specializes in working with schools, supports the proposed Cycle 2 plan and moving lighting projects to the prescriptive program.²²

Finally, offering an incentive rate that is too high would put an increased financial burden on the Company's business customers. If the Company were to move back to the Cycle 1 incentive level as proposed by Brightergy, it would require an additional \$11 million be recovered on non-residential customers' bills, an increase of 15% for KCPL customers and 11% for GMO customers.²³ For all of these reasons, the Commission concludes that the Company's Cycle 2 Custom Rebate Program should be approved because it meets the requirements of MEEIA and is expected to result in energy savings and reduced costs for customers.

B. Regulatory Flexibility

Commission rule 4 CSR 240-20.094(5) sets forth the requirements for a utility to discontinue its MEEIA programs²⁴, and states as follows:

Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 393.1075, RSMo, an electric utility may file an application with the commission to discontinue demand-side programs by filing information and

¹⁹ Ex. 103, Winslow Surrebuttal, p. 7.

²⁰ Ex. 103, Winslow Surrebuttal, p. 8.

²¹ Transcript, p. 130-131.

²² Ex. 103, Winslow Surrebuttal, p. 7.

²³ Ex. 103, Winslow Surrebuttal, p. 9-10; Transcript, p. 120.

²⁴ The MEEIA statute does not address under what circumstances an electric utility may discontinue its MEEIA programs.

documentation required by 4 CSR 240-3.164(5).^[25] The commission shall approve or reject such applications for discontinuation of utility demand-side programs within thirty (30) days of the filing of an application under this section only after providing an opportunity for a hearing.

Commission rules 4 CSR 240-20.094(9) and 4 CSR 240-3.164(6) both provide that “[u]pon request and for good cause shown, the commission may grant a variance from any provision of this rule”.

The signatory parties to the Amended MEEIA Plan contained in the Stipulation request that the Commission grant a number of variances to Commission rules²⁶, including a variance to waive Commission rule 4 CSR 240-20.094(5) quoted above. The Amended MEEIA Plan states that the Company will not commit to implement the Cycle 2 MEEIA programs for three years without the ability to discontinue all programs, under appropriate conditions as defined by the Company. The Amended MEEIA Plan proposes that the Company will include the following provision in its Cycle 2 tariff sheets:

KCP&L/GMO reserves the right to discontinue the entire MEEIA Cycle 2 portfolio, if KCP&L/GMO determines that implementation of such programs is no longer reasonable due to changed factors or circumstances that have materially negatively impacted the economic viability of such programs as determined by KCP&L/GMO, upon no less than thirty days’ notice to the Commission.²⁷

The Amended MEEIA Plan also provides protections for program participants, including, in part, at least 30 days’ notice to interested parties and customers with supporting documentation justifying the discontinuance, honoring all commitments made to program participants prior to the date of discontinuance, and forfeiting any recovery of the

²⁵ Commission rule 4 CSR 240-3.164(5) states that “[w]hen an electric utility files to discontinue a demand-side program as described in 4 CSR 240-20.094(5), the electric utility shall file the following information. All models and spreadsheets shall be provided as executable versions in native format with all formulas intact.

(A) Complete explanation for the utility’s decision to request to discontinue a demand-side program.

(B) EM&V reports for the demand-side program in question.

(C) Date by which a final EM&V report for the demand-side program in question will be filed.”

²⁶ See, Stipulation, Appendix H.

²⁷ Stipulation, p. 18.

Company's earnings opportunity in connection with the programs.²⁸ If the Company wishes to discontinue individual MEEIA programs, it would still be required to comply with the procedural requirements in the rule.

Brightergy requests that the Commission not grant the variance. Brightergy argues that granting it would give the Company unilateral authority to discontinue all programs, which has not been granted to any other utility and is not needed. Brightergy argues that the Commission, rather than the Company, should be making the decision whether to terminate MEEIA programs, and turning this authority over to the Company would create a hostile environment that discourages trade allies from investing in the Company's service area. In addition, allowing the variance could result in a depressed market for energy efficiency, as many customers would be reluctant to begin the process of evaluating their property for efficiency investments and would likely be nervous about the program's viability. Brightergy claims that thirty days is too narrow of a window to evaluate a proposal and make an investment decision.

The Company states that it must have the ability to discontinue all Cycle 2 programs because uncertainty exists regarding the recovery of MEEIA investment and the proper timing of energy efficiency programs. The Company does not yet know how the Commission will administer the previous incentive program for Cycle 1, and there is significant uncertainty about the federal Clean Power Plan. Although the Commission rule requires action within 30 days if there is a request to discontinue programs, the Company is worried that probable extensions of this deadline would occur to accommodate the hearing

²⁸ Stipulation, p. 18-20.

process, preventing it from managing its business effectively and moving quickly enough to discontinue Cycle 2 programs.

While the Commission views this proposed variance with disfavor, it also recognizes that MEEIA programs are voluntary in this state, and the Company has stated in evidence and briefs that the variance is necessary for it to implement the Amended MEEIA Plan. The Commission finds under the particular circumstances of this case that the benefits of having energy efficiency programs in the Company's service area outweigh the serious drawbacks of approving the variance. In addition, it is unlikely that the Company will actually discontinue all Cycle 2 programs, as doing so will result in the significant financial consequence of forfeiting any recovery of an earnings opportunity, especially as that earnings amount grows during the Cycle 2 period. The Commission concludes that that there is good cause for granting the variance because (1) the Amended MEEIA Plan provisions contain protections for program participants, (2) company-run demand-side programs are voluntary under the MEEIA statute, and (3) the variance is a necessary requirement for the Company to commit to implementing the Cycle 2 portfolio of demand-side programs and DSIM.

C. Amended MEEIA Plan

Other than the two provisions in the Amended MEEIA Plan discussed above to which Brightergy objected, no party has objected to the Amended MEEIA Plan and Brightergy does not oppose the other provisions of the Amended MEEIA Plan. Staff presented credible evidence that the Amended MEEIA Plan fully satisfies the requirements of MEEIA.²⁹ In addition, the Commission finds that the Amended MEEIA Plan meets the

²⁹ Ex. 202, Rogers Surrebuttal, p. 4-5.

objectives identified in the Commission's Report and Order issued on October 22, 2015 in File No. EO-2015-0055, which are (1) programs and DSIM are expected to provide benefits to all customers, (2) retrospective EM&V will be used to determine savings that actually occur, and (3) the earnings opportunity has a component relating to the reduction of supply-side investment.³⁰ The Amended MEEIA Plan also provides for an important collaborative process to address new and underserved customer markets and to identify cost-effective energy and demand savings to achieve possibly 200 GWh of additional savings for program years 2017 and 2018.³¹ The Commission concludes that the Amended MEEIA Plan should be approved.

III. Conclusions of Law

1. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. The Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested-to subject matter.³²

2. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.³³ Testimony need not be refuted or controverted to be disbelieved by the Commission.³⁴ The Commission determines what weight to accord to

³⁰ Ex. 202, Rogers Surrebuttal, p. 4-5; Ex. 201, Rogers Direct, p. 4-5; Ex. 203, Stahlman Direct, p. 4-5.

³¹ Stipulation, p. 7-8.

³² Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 382 (Mo. App. 2005).

³³ *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 882 (Mo. App. 1985).

³⁴ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

the evidence adduced.³⁵ “It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it.”³⁶ The Commission may evaluate the expert testimony presented to it and choose between the various experts.³⁷

3. Where the evidence conflicts, the Commission determines which evidence is most credible. No law requires the Commission to expound upon which portions of the record the Commission accepted or rejected.³⁸

4. The Missouri Energy Efficiency Investment Act states, in pertinent part:

393.1075. 3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:

(1) Provide timely cost recovery for utilities;

(2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and

(3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.

4. The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings. Recovery for such programs shall not be permitted unless the programs are approved by the commission, result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers. The commission shall consider the total resource cost test a preferred cost-effectiveness test. Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Associated Natural Gas, supra*, 706 S.W.2d at 882.

³⁸ *Stith v. Lakin*, 129 S.W.3d 912, 920-921 (Mo. App.2004).

interest. Nothing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program or through tax or other governmental credits or incentives specifically designed for that purpose.

5. With regard to the Company's Amended MEEIA Plan, Commission rule 4 CSR 240-20.094(3) requires the Commission to "approve, approve with modification acceptable to the electric utility, or reject such applications for approval of demand-side program plans". It also says that the Commission must do so after providing the opportunity for hearing. But even if a hearing is provided, this matter does not rise to the level of a contested case because the statute defines a "contested case" as "a proceeding before an agency in which legal rights, duties, or privileges of specific parties are required by law to be determined after hearing".³⁹ The "law" referred to in this definition includes any ordinance, statute, or constitutional provision that mandates a hearing.⁴⁰

Here, no legal rights, duties, or privileges are required by law to be determined after hearing, because no party has a legal right to receive, or a duty to give, energy efficiency programs. That energy efficiency is optional is evidenced by the statute that says "[t]he commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings."⁴¹ Because this is a non-contested case, the Commission is not required to make findings of fact.⁴²

³⁹ Section 536.010(4), RSMo Cum. Supp. 2013.

⁴⁰ *State ex rel. Yarber v. McHenry*, 915 S.W.2d 325, 328 (Mo. banc. 1995); *McCoy v. Caldwell County*, 145 S.W.3d 427 (Mo. 2004).

⁴¹ Section 393.1075.4, RSMo.

⁴² *State ex. rel. Public Counsel v. Public Service Com'n*, 210 S.W.3d 344, 355 (Mo. App. W.D. 2006).

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that the Amended MEEIA Plan meets the requirements of MEEIA and the Commission's rules and is just and reasonable. The Amended MEEIA Plan will be approved, and the requested variances to Commission rules will be granted. This report and order will be made effective in ten days in order to expedite the resumption of energy efficiency programs in the Company's service area.

The Office of the Public Counsel's motion to reject tariff sheets, filed on December 2, 2015, argued, in part, that the initial tariff sheets filed by the Company should be rejected because they are inconsistent with the Amended MEEIA Plan contained in the Stipulation and are no longer supported by the Company. The Commission agrees that the initial tariff sheets, which were subsequently extended by the Company, are inconsistent with the Amended MEEIA Plan and should be rejected. The Commission will grant the motion and authorize the Company to file new tariff sheets in compliance with this Report and Order.

THE COMMISSION ORDERS THAT:

1. Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company's Amended MEEIA Plan contained in the *Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings*, filed on November 23, 2015, is approved. The signatory parties are ordered to comply with the terms of the Amended MEEIA Plan contained in the *Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings*,

which is incorporated herein as if fully set forth. A copy of the stipulation and agreement without appendices is attached to this order.

2. The Office of the Public Counsel's Motion to Reject Tariff Sheets, filed on December 2, 2015, is granted.

3. The tariff sheets submitted on August 28, 2015, and subsequently extended, by Kansas City Power & Light Company and assigned Tariff Tracking Nos. YE-2016-0072 and YE-2016-0073, are rejected.

4. The tariff sheets submitted on August 28, 2015, and subsequently extended, by KCP&L Greater Missouri Operations Company and assigned Tariff Tracking No. YE-2016-0074, are rejected.

5. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company are authorized to file tariff sheets in compliance with this order and a motion for expedited treatment.

6. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company are granted the variances to Commission rules described in Appendix H to the *Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings*. A copy of Appendix H is attached to this order.

7. This Report and Order shall become effective on March 12, 2016.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
and Coleman, CC., concur;
Rupp, C., dissents;
and certify compliance with the
provisions of Section 536.080, RSMo.

Bushmann, Senior Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of KCP&L Greater)
Missouri Operations Company for Permission and)
Approval of a Certificate of Public Convenience and)
Necessity Authorizing it to Construct, Install, Own,)
Operate, Maintain and Otherwise Control and Manage)
Solar Generation Facilities in Western Missouri)

File No. EA-2015-0256

CERTIFICATES

§21. Grant or refusal of certificate generally

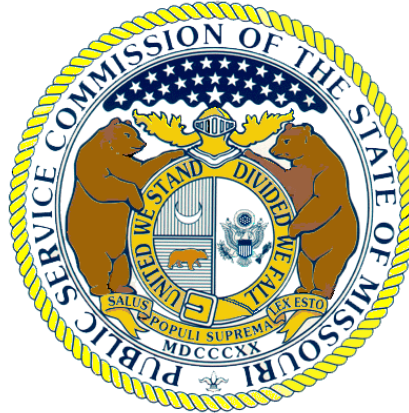
In deciding an application for a certificate of convenience and necessity, the standard is whether improved service justifies the cost, and any factors that the Commission employs in applying that standard are guidelines that do not substitute for the standard.

CERTIFICATES

§42. Electric and power

The Commission granted an electric corporation's application for a certificate of convenience and necessity to construct and operate a pilot solar generating facility, though the electric corporation did not need the extra wattage and such was wattage was available by less expensive means, because the project would train the electric corporation's personnel in construction and operation of larger solar generating facility in the future.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of KCP&L Greater)
Missouri Operations Company for Permission and)
Approval of a Certificate of Public Convenience and)
Necessity Authorizing it to Construct, Install, Own,)
Operate, Maintain and Otherwise Control and Manage)
Solar Generation Facilities in Western Missouri)

File No. EA-2015-0256

REPORT AND ORDER

Issue Date: March 2, 2016

Effective Date: March 12, 2016

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri)
)
)
) File No. EA-2015-0256
)
)

APPEARANCES

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And

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For the Staff of the Missouri Public Service Commission.

Steven M. Kretzer, and **Tim J. Opitz**, Senior Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

Alexander Antal, Associate General Counsel, Missouri Department of Economic Development, P.O. Box 1157, Jefferson City, Missouri 65102.

For the Missouri Division of Energy.

David C. Linton, Attorney at Law, 314 Romaine Spring View, Fenton, Missouri 63026.

For United for Missouri, Inc.

Andrew Zellers, General Counsel, Brightergy, LLC, 1712 Main St., 6th Floor, Kansas City, Missouri 64108.

For Brightergy, LLC.

Andrew J. Linhares, Attorney at Law, 910 East Broadway, Suite 205, Columbia, Missouri

65201.

For Earth Island Institute d/b/a Renew Missouri.

Chief Regulatory Law Judge: **Morris L. Woodruff**

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

KCP&L Greater Missouri Operations Company (GMO) filed an Application on November 12, 2015, requesting a certificate of convenience and necessity to construct, own, and operate a solar electric generation facility in rural Jackson County, Missouri. The Commission directed that notice of GMO's filing be given to potentially interested persons and established December 7 as the deadline to file an application to intervene.

The Commission received timely applications to intervene from the Missouri Department of Economic Development, Division of Energy; United For Missouri, Inc.; Brightergy, LLC; and Earth Island Institute d/b/a Renew Missouri, and each was allowed to intervene. An evidentiary hearing was held on February 11, 2016, and the parties filed post-hearing briefs on February 18.

Findings of Fact

1. GMO is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 65105. GMO is primarily engaged in providing electric and steam utility service to the public in its certificated areas in Missouri. GMO is an “electrical corporation” and a “public utility” subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393.¹

2. GMO is a subsidiary of Great Plains Energy, which also owns Kansas City Power & Light Company (KCP&L). GMO has no employees, rather all services for GMO are provided by employees of KCP&L.²

3. GMO has asked the Commission to grant it a certificate of convenience and necessity to construct, own, and operate a new solar electrical production facility to be built in an unincorporated portion of Jackson County, Missouri, near the town of Greenwood. The 300-acre Greenwood site is already owned by GMO and is located within the company’s service territory. The existing Greenwood Energy Center, which includes four combustion turbines, is also located at the site. The proposed solar plant will be located on

¹ Stipulation of Agreed Upon Facts, Paragraph 3. On February 2, 2016, at the direction of the Commission, the parties filed a stipulation of agreed upon facts. United for Missouri did not sign the stipulation, but did not oppose it. As permitted by Commission Rule 4 CSR 240-2.115, the Commission will treat that stipulation of facts as unanimous and will cite to it as appropriate in the report and order.

² Transcript, Page 210, Lines 4-10.

farmland north of the combustion turbines.³

4. The proposed solar plant would cover approximately twelve acres of the Greenwood site.⁴ There is enough room at the Greenwood site to construct additional solar plant if the company chooses to do so.⁵

5. The solar plant is expected to produce three megawatts of electric power when completed.⁶ That amounts to 4,700 megawatt hours of energy per year,⁷ enough power to serve approximately 440 customers.⁸ The company hopes to have the solar plant completed and in operation by the end of July, 2016.⁹

6. The expected cost of the solar plant was disclosed in GMO's Application and at the hearing, but it is a highly confidential number and will not be included in this order.¹⁰ The cost of the project is small relative to the \$1.4 billion of rate base currently owned by GMO and in relation to the \$180 million in annual capital expenditures made by the company.¹¹ Given the small size of the project, GMO views it as a pilot project, intended to try out a new technology.¹²

7. Because of its relatively small cost, GMO intends to pay the cost of the solar plant from its available funds.¹³ Ultimately, it would seek to recover those costs from

³ Stipulation of Agreed Upon Facts, Paragraph 4.

⁴ Stipulation of Agreed Upon Facts, Paragraph 5.

⁵ Transcript, Page 228, Lines 20-25.

⁶ Transcript, Page 73, Lines 23-24.

⁷ Transcript, Page 92, Lines 7-13.

⁸ Transcript, Page 74, Lines 9-12.

⁹ Transcript, Page 168, Lines 5-14.

¹⁰ The cost of the plant can be found in the Application, Page 3, and at Page 256 of the transcript, Line 16.

¹¹ Transcript, Page 193, Lines 1-5.

¹² Transcript, Page 75, Lines 15-24.

¹³ Application Page 4, and Transcript, Page 270, Lines 2-6.

GMO's ratepayers.¹⁴ GMO will also be able to take advantage of the federal Investment Tax Credit to offset thirty percent of the cost of the project.¹⁵

8. The solar plant will be connected to a single circuit at the distribution level of GMO's electrical system.¹⁶ That makes this plant different than GMO's other generation sources, including its wind resources, which are connected at the transmission level.¹⁷ Because the solar plant is not connected at the transmission level, it will not be dispatched by the Southwest Power Pool as are GMO's other generating assets.¹⁸ The solar plant's connection at the distribution level also differs from existing rooftop solar generation, which is connected behind the customer's meter.¹⁹ The connection at the distribution level also makes this solar plant similar to a potential community solar plant.²⁰

9. A community solar plant is one in which members of a particular community band together to build a small solar generation facility to provide power to their community. GMO would be required to integrate that community solar plant into its distribution system.²¹

10. Because of its small size, the power produced by the solar plant will not allow GMO to discontinue the use of any of its non-renewable electric generation resources. It would, however, reduce the need to use coal-fired generation and would offset an estimated 5,000 tons of carbon dioxide that would otherwise be emitted if that electricity

¹⁴ Transcript, Pages 218-219, Lines 22-25, 1-2.

¹⁵ Transcript, Page 237, Lines 7-13.

¹⁶ Transcript, Page 74, Lines 1-8.

¹⁷ Transcript, Page 74, Lines 15-21.

¹⁸ Transcript, Page 241, Lines 4-11.

¹⁹ Transcript, Page 243, Lines 2-6.

²⁰ Transcript, Page 85, Lines 3-12.

²¹ Transcript, Pages 116-117, Lines 15-25, 1-15.

were generated by a coal-fired plant.²² Again, because of the small size of the solar plant, that is only a small percentage of GMO's total carbon emissions.²³

11. GMO's plan to build a small utility-scale solar plant at Greenwood would not be the first such solar plant in Missouri. In 2015, the Commission approved a similar solar plant in O'Fallon, Missouri to be operated by Union Electric Company, d/b/a Ameren Missouri.²⁴

12. GMO has decided to pursue solar power as a renewable alternative to coal-based electric generation. Its strategy is to develop a utility-scale solar facility in the range of 2-5 megawatts, and to pursue rooftop solar installations owned by the utility at the commercial and industrial level.²⁵ This proposal encompasses the first goal, and the company has filed notice of its intent to pursue rooftop solar.²⁶

13. GMO reflected the addition of a solar generation system in its most recent Integrated Resource Plan (File No. EO-2015-0252) and in its Preferred Resource Plan.²⁷

14. GMO needs to pursue solar power to diversify its sources of electricity, as it currently does not have a utility-scale solar facility.²⁸ Kansas City Power & Light Company -GMO's corporate sister – currently operates two smaller solar facilities in Kansas City, one at Paseo School and the other at Kauffman Stadium. Those facilities are much smaller

²² Transcript, Page 142, Lines 6-9.

²³ Transcript, Page 141, Lines 22-24.

²⁴ Transcript Page 77, Lines 1-16. *Order Approving Amended Non-Unanimous Stipulation and Agreement*, File No. EA-2014-0136, April 8, 2015.

²⁵ Transcript, Page 173, Lines 15-24.

²⁶ Stipulation of Agreed Upon Facts, Paragraph 7. GMO's notice has been assigned File No. EA-2016-0044.

²⁷ Stipulation of Agreed Upon Facts, Paragraph 6.

²⁸ Transcript, Page 132, Lines 22-25.

than three megawatts – the facility at the stadium is 28.8 kilowatts²⁹ – and, significantly, are connected at the secondary level, so they primarily serve a single customer at those locations.³⁰

15. GMO also needs to pursue solar power to comply with current and future environmental requirements. At the state level, GMO must comply with the requirements of Missouri's Renewable Energy Standard (RES). At a minimum, by 2021, investor-owned electric utilities, such as GMO, must obtain fifteen percent of their sales from renewable energy. Of that fifteen percent, two percent must come from solar energy.³¹ GMO does not need to add this solar plant to meet Missouri's current RES standards.³²

16. GMO must also comply with multiple environmental regulations at the federal level. Diversification into increased solar production will help GMO generate more clean energy and help it to comply with those regulations. That is why GMO included plans for a utility-scale solar plant in its Integrated Resource Plan.³³

17. GMO's greatest need for additional solar production at this time may be its need to comply with the federal Environmental Protection Agency's (EPA's) Clean Power Plan regulation, which is aimed at reducing the amount of carbon injected into the atmosphere. Nearly everything about the Clean Power Plan is still uncertain.

18. The Clean Power Plan regulation has recently been finalized and is currently an effective final regulation.³⁴ The Clean Power Plan gives the separate states options for how to implement the plan set out by the EPA. Missouri does not yet have a plan in place,

²⁹ Transcript, Page 114, Lines 5-8.

³⁰ Transcript, Page 79, Lines 11-25.

³¹ Transcript, Page 260, Lines 8-13.

³² Transcript, Page 260, Lines 14-18.

³³ Transcript, Pages 158-159, Lines 2-25, 1-12.

³⁴ Transcript, Page 123, Lines 23-25.

but was to have submitted an initial compliance plan by September 2016, with a final plan submitted in 2018. The regulation requires compliance with reduced carbon levels beginning in 2022.³⁵

19. To add even more uncertainty, the United States Supreme Court recently issued an order staying enforcement of the Clean Power Plan while the merits of a challenge to the rule are argued at the D.C. Circuit Court of Appeals.³⁶ The Supreme Court's stay of the compliance portions of the Clean Power Plan is not a vacatur and the rule remains in effect.³⁷ The judicial stay does not provide additional certainty, on the contrary, the stay of the compliance portion of the rule might delay the submission of a state plan and thereby shorten the available time for GMO to plan how it will meet the requirements of the state plan. GMO reasonably believes the rule will likely remain in some form and, therefore, it is prudent for the company to continue to plan for how it will comply with that rule.³⁸

20. The Clean Power Plan as it currently exists would require GMO to reduce its carbon production by up to 37 percent. GMO will need to diversify its generation portfolio by adding wind, energy efficiency and additional solar power to meet those requirements.³⁹

21. Witnesses for Staff and Public Counsel meticulously established that GMO's plan to build a utility-scale solar plant is not the least-cost alternative for obtaining an additional three megawatts of energy. Wind energy and fossil fuel generation would be less costly, even when taking into account the cost to comply with environmental

³⁵ Transcript, Page 127, Lines 13-21.

³⁶ Transcript, Page 128, Lines 22-24.

³⁷ Transcript, Page 138, Lines 9-10.

³⁸ Transcript, Page 135, Lines 6-13.

³⁹ Transcript, Page 130, Lines 4-12.

regulations.⁴⁰ In fact, GMO does not need an additional three megawatts of generating capacity to meet the energy requirements of its customers at this time.⁴¹

22. But GMO does not claim that its plan to build a utility-scale solar plant is the least-cost alternative for obtaining the electricity that plant will produce, or to comply with environmental regulatory requirements.⁴² Rather GMO wants to build the solar plant to gain experience and skills in operating a utility-scale solar plant with an ultimate goal of increasing GMO's use of solar power.⁴³

23. GMO expects to gain a great deal of knowledge and experience by constructing the solar plant as a pilot project. From an engineering standpoint, GMO expects to gain experience in designing an interconnection facility for a utility-scale solar plant.⁴⁴ It expects to learn whether there are advantages to locating a solar plant next to an existing generating facility, and whether the workers at the existing facility can be trained to manage and maintain the solar plant.⁴⁵ GMO wants to learn more about how a utility-scale solar plant would impact the company's distribution system, including voltage and system stability,⁴⁶ as well as possibly providing reactive power to support the system.⁴⁷ Further, GMO wants to examine how solar energy production occurs under weather conditions in GMO's service territory.⁴⁸

24. Although solar power is not the least-cost option at this time, it is anticipated

⁴⁰ Ex. 4HC, See also, Transcript, Pages 304-312.

⁴¹ Transcript, Page 298, Lines 17-25.

⁴² Transcript, Page 177, Lines 3-18.

⁴³ Transcript, Page 201, Lines 1-6.

⁴⁴ Transcript, Page 77, Lines 19-23.

⁴⁵ Transcript, Pages 77-78, Lines 23-25, 1-4.

⁴⁶ Transcript, Page 80, Lines 5-12.

⁴⁷ Transcript, Page 112, Lines 15-21.

⁴⁸ Transcript, Page 84, Lines 19-24.

that its costs will continue to drop in the next few years to bring it into parity with alternative sources of electricity.⁴⁹ Witnesses for Staff⁵⁰ and Public Counsel⁵¹ agreed that the cost of solar power would decrease in future years.

25. Staff and Public Counsel contend the decreasing cost of solar generation makes GMO's project uneconomic at this time because the costs will be lower in a few years. Public Counsel's witness, Dr. Michael Proctor, attempted to quantify a portion of the savings that would result by waiting to build this solar plant and determined that the optimum time to build the plant would be 2020.⁵² He warned that building the plant now would result in significantly higher costs to ratepayers.⁵³

26. Dr. Proctor's calculation showed that the savings from waiting until 2020 to build this solar plant would appear to be significant when measured on a per megawatt hour per year basis.⁵⁴ However, because this solar project is quite small, the actual total cost savings resulting from the delay are not significant when compared to GMO's total annual revenues.⁵⁵

27. The cost to build GMO's proposed solar plant will likely decrease in the coming years. But rather than being a cause for delay, that is a cause for GMO to act now. As the price of solar power decreases there is a possibility that third parties may construct a community solar system that will need to be incorporated into GMO's system. If that

⁴⁹ Transcript, Pages 170-171, Lines 20-25, 1.

⁵⁰ Transcript, Page 328, Lines 11-17, Page 401, Lines 4-10, Page 418, Lines 9-19.

⁵¹ Transcript, Page 459, Lines 6-11.

⁵² Transcript, Page 489, Lines 2-5.

⁵³ Transcript, Page 511, Lines 16-20.

⁵⁴ Those numbers are highly confidential so they will not be stated in this order. The numbers may be found in Ex. 21 HC.

⁵⁵ Those numbers are highly confidential so they will not be stated in this order. The numbers may be found at Transcript, Pages 519-520, Lines 1-25, 1-15.

happens, GMO will benefit from the experience of operating its own solar plant.⁵⁶

28. Aside from the fact that a community solar system might be constructed in GMO's service territory without GMO's participation, GMO would likely benefit from learning its lessons about how to integrate solar into its system now rather than a few years from now when many other individuals and utilities are taking advantage of the coming price parity.⁵⁷ GMO's customers have already shown their enthusiasm for solar power by collecting \$50 million in solar rebates.⁵⁸

29. KCP&L also plans to pursue additional solar electric production and will benefit from the lessons learned by GMO in building the Greenwood plant. But only GMO ratepayers will be asked to pay the cost to construct that plant.⁵⁹

30. Whether GMO builds this solar plant in 2016 or 2020, it will be able to take advantage of a federal tax credit which Congress extended on December 18, 2015. The Internal Revenue Code Section 48 Energy Credit applies to solar facilities and will offset 30 percent of qualifying costs through tax year 2019. GMO does not expect to utilize the tax credit until after 2021 because of existing net operating loss carryforwards that must be used first in the consolidated Great Plains Energy and subsidiaries' federal tax return.⁶⁰

31. GMO's ratepayers will benefit from the tax credit when that credit is claimed in the company's tax return. The credit would reduce the company's tax liability, and the reduced tax liability reduces the revenue requirement that the company would otherwise recover from ratepayers.⁶¹

⁵⁶ Transcript, Page 203, Lines 11-19.

⁵⁷ Transcript, Pages 86-87, Lines 20-25, 1-11.

⁵⁸ Transcript, Page 223, Lines 1-9.

⁵⁹ Transcript, Page 233, Lines 3-16.

⁶⁰ Stipulation of Agreed Upon Facts, Paragraph 8.

⁶¹ Transcript, Page 442, Lines 8-24.

Conclusions of Law

A. GMO is an electrical corporation as that term is defined at Section 386.020(15), RSMo (Supp. 2013). As an electrical corporation, GMO is subject to regulation by this Commission as described in Chapters 386 and 393, RSMo.

B. Missouri's Renewable Energy Standards are found in Sections 393.1025 and 393.1030, RSMo (Supp. 2013)

C. Section 393.170.1, RSMo 2000, provides, in part, that "[n]o ... electrical corporation, ... shall begin construction of a ... electric plant ... without first having obtained the permission and approval of the commission."

D. Section 393.170.3, RSMo 2000 provides that:

[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. ..."

E. That statute sets the legal standard by which the Commission must determine whether to grant GMO the certificate of convenience and necessity it seeks. In interpreting the meaning of that legal standard in a 1993 decision, the Missouri Court of Appeals said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is 'necessary or convenient for the public service' (*citing* section 393.170.3). The term 'necessity' does not mean 'essential' or absolutely indispensable', but that an additional service would be an improvement justifying its cost (*citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W. 2nd at 219). ... Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. (*Citing State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n*, 527 S.W.2d 390, 392 (Mo. App. 1975)).⁶²

F. In evaluating applications for certificates of convenience and necessity, the Commission has frequently considered five factors first described in a Commission decision

⁶² *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm'n*, 848 S.W.2nd 593, 597-598 (Mo. App. W.D. 1993).

regarding an application for certificate of convenience and necessity filed by Tartan Energy Company, LC, d/b/a Southern Missouri Gas Company.⁶³ The *Tartan* factors, as they have become known, are: “(1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest.”⁶⁴

G. While the *Tartan* factors are frequently cited in Commission decisions regarding applications for certificates of convenience and necessity, they are merely guidelines for the Commission’s decision, and are not part of the legal standard set forth by the controlling statute. Moreover, the *Tartan* decision concerned an application for a certificate to provide natural gas service to a particular service area. As a result, the described factors are not precisely applicable to GMO’s application to construct a new electric plant. Nevertheless, they provide some guidance and are specifically referenced in the list of issues set forth by the parties for resolution by the Commission. Therefore, the Commission will evaluate those factors as part of its decision in this case.

Decision

In describing its decision, the Commission will respond to the list of issues set forth by the parties before the evidentiary hearing. In part, that list of issues is based on the previously described *Tartan* standards.

1. Does the evidence establish that the Solar Generation project as described in GMO’s applications in this docket and for which GMO is seeking a certificate of

⁶³ *In the Matter of the Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d, 173 (1994).

⁶⁴ *Tartan Energy*, at 177.

convenience and necessity (“CCN”), is “necessary or convenient for the public service” within the meaning of section 393.170, RSMo?

1a. Does the evidence establish that there is a need for the project?

The evidence establishes that there is a need for the project. While the use of solar power in Missouri is limited at this time, solar power will become more prominent in the near future when its costs decrease due to improved technology and the cost of more carbon-intensive energy sources increase due to the cost to comply with current and future environmental regulation. That decrease in relative costs will make solar power more attractive to electric utilities, and importantly, more attractive to customers who have already demonstrated a strong interest in solar power by taking advantage of solar power rebates mandated by Missouri’s RES statute.

GMO proposes to build a small, but utility-scale, solar power generating plant as a pilot program to give it “hands-on” experience in designing, constructing, and operating a solar facility with a view toward eventually building additional solar facilities. Gaining that experience now is important so that GMO can remain in front of the upcoming adoption curve. Furthermore, GMO will need to build more solar generating facilities, as well as other renewable generating resources, to comply with the federal Clean Power Plan or other regulations designed to reduce the injection of carbon dioxide and other pollutants into the atmosphere. This pilot plant represents a good first step.

1b. Is GMO qualified to provide the proposed project services?

This is one of the *Tartan* standards that, while is appropriate when considering whether a utility should be allowed to provide a new service or move into a new service territory, does not really apply to GMO’s application for authority to construct a solar power generation plant. GMO has constructed and operated electrical generation facilities of various types for many years. Its desire to gain more experience in constructing and

operating a pilot solar plant provides no reason to doubt its ability to build and operate that plant. GMO is qualified to construct and operate the proposed plant.

1c. Does GMO have the financial ability to provide the project services?

The cost to construct the proposed pilot solar plant is relatively small compared to GMO's financial resources. As a result, GMO will be able to pay those construction costs from its available funds. It clearly has the financial ability to construct the pilot solar plant.

1d. Is GMO's proposed project economically feasible?

GMO readily agrees that construction of the proposed pilot solar plant is not the least-cost alternative for obtaining an additional three megawatts of electric power it is not even the least cost alternative for obtaining that three megawatts of electric power from a renewable resource – wind power would be cheaper. But the purpose of this pilot solar plant is not solely to provide the cheapest power possible to GMO's customers. Rather, its purpose is to help GMO to develop more and cheaper solar power in the future. The benefits GMO and its ratepayers will ultimately receive from the lessons learned from this pilot project are not easily quantifiable since there is no way to measure the amounts saved by avoiding mistakes that might otherwise be made. But it is likely that future savings will be substantial. The Commission concludes that as a pilot project, GMO's solar power plant is economically feasible.

1e. Does GMO's proposed project promote the public interest?

GMO's customers and the general public have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere. It is clear, solar power will be an integral part of this development, building a bridge to our energy future. The Commission can either act to facilitate that process or temporarily hinder it. GMO's proposed pilot solar plant will do the former and, thus, it will

promote the public interest.

2. If GMO's CCN application does not meet the criteria set forth by Tartan, is there an exception that would still permit the Commission to grant the CCN?

As explained earlier, the *Tartan* standards were created by the Commission only to guide its decision making when considering an application for a certificate of convenience and necessity. They are not the legal standard by which that decision is measured. No exception is necessary, and the Commission has found that GMO's application meets the *Tartan* criteria.

3. Should the impact on ratepayers be considered by the Commission when weighing GMO's CCN application?

a. If so, does the evidence establish that the project will have an impact on ratepayers?

b. If ratepayer impact is an appropriate issue, does the effect violate the public interest?

Of course, the impact on ratepayers must be considered when weighing GMO's application to construct a pilot solar plant. The financial cost that will result from construction of this plant will be very small when compared to the amount of money GMO must spend each year to provide electric service to its customers. As a result, the impact on customer rates will be minimal. The small increase in rates that may result from this project will be amply offset by the less tangible benefits that will result from the lessons GMO will learn from the project and the benefits that will result from the increased use of solar power in the future; made possible by construction and operation of this pilot solar plant.

The Commission is concerned that only GMO ratepayers will bear the cost of the project. The Commission will not make any specific ratemaking decisions in this case.

Those will be reserved for GMO's pending rate case. However, the matter will once again come before the Commission when GMO seeks to add the plant to its rate base. At that time, the Commission will expect GMO to propose a means by which those costs will be shared with KCP&L's customers who will also benefit from the lessons learned from this pilot project.

4. Who will benefit from any tax credits extended by the U.S. government should the project be approved?

The evidence established that any tax credits made available to GMO because of the construction of this plant would off-set the company's tax liabilities and reduce the company's operating costs. Since ratepayers ultimately pay the company's taxes through their rates, those tax credits would benefit GMO's ratepayers.

5. If the Commission approves the CCN, should it impose any conditions?

In its statement of positions, Staff proposed six operational conditions designed to ensure that GMO complies with certain technical requirements. The evidence presented at the hearing demonstrated that GMO has either already complied with those conditions, or is willing to do so. The Commission will order GMO to comply with those operational conditions.

Staff also proposed economic conditions that would require GMO's shareholders to bear all or part of the cost to construct what the company concedes is not the least-cost option for obtaining three megawatts of energy. In response to Staff's proposal, GMO asks the Commission to make a finding of decisional prudence in this case to assure the company that it will be able to include the value of the solar plant in its rate base in a future rate case. The Commission will not make that rate making decision in this case. But the Commission finds that GMO has demonstrated that its solar plant is "an improvement

justifying its cost.”⁶⁵ GMO is free to seek to include the solar plant in its rate base in its pending rate case. There is no reason to impose any of the economic conditions proposed by Staff, and the Commission will not do so.

The Commission has found that GMO’s proposal to construct a pilot solar plant is necessary or convenient for the public service and will grant the company the certificate of convenience and necessity it seeks. Given GMO’s desire to promptly begin construction on the plant, the Commission will make this order effective in ten days.

THE COMMISSION ORDERS THAT:

1. KCP&L Greater Missouri Operations Company’s Application for a certificate of convenience and necessity to construct, install, own, operate, maintain and otherwise control and manage electrical solar production and related facilities near Greenwood, Missouri is granted.

2. KCP&L Greater Missouri Operations Company shall comply with the following requirements:

a) File with the Commission a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks, or any underground facility the proposed construction will cross as required by 4 CSR 240-3.105(1)(B)1, or a statement that there are no electric and telephone lines, railroad tracks, or underground facilities on the project site.

b) File the complete plans and specifications for construction of the proposed Greenwood Solar Facility with the Commission as required by 4 CSR 240-3.105(1)(B)2.

c) File with the Commission all required approvals as required by 4 CSR 240-

⁶⁵ *State ex rel. Intercon Gas, Inc. v Pub. Serv. Comm’n*, 848 S.W.2nd 593, 597-598 (Mo. App. W.D. 1993).

3.105(1)(D), or seek an appropriate waiver, as provided by 4 CSR 240-3.105(2).

d) Perform and file with the Commission an Interconnection Study demonstrating the project will not cause an adverse impact to the company's distribution system before commencing construction. The major components of this study should include: an executive summary, description of the Solar PV equipment and point of interconnection, the projected distribution system conditions, load flow analysis, and fault analysis.

e) Develop and file with the Commission a plan outlining its learning objectives for the Greenwood Solar Facility and a description of how the company will evaluate those objectives before commencing construction.

f) File with the Commission an evaluation of the Plan required by e) after the Greenwood Solar Facility has operated for a period of five years before the company's application for a certificate of convenience and necessity for its next utility-scale solar facility.

2. This report and order shall become effective on March 12, 2016.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 2nd day of March, 2016.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Ameren Transmission	)	
Company of Illinois for Other Relief or, in the Alternative	)	
a Certificate of Public Convenience and Necessity	)	
Authorizing it to Construct, Install, Own, Operate,	)	
Maintain and Otherwise Control and Manage a	)	File No. EA-2015-0146
345,000-volt Electric Transmission Line from Palmyra,	)	
Missouri, to the Iowa Border and Associated Substation	)	
Near Kirksville, Missouri.	)	

CERTIFICATES

§42. Electric and power

The Commission granted an electric corporation's application for a certificate of convenience and necessity to construct and operate a transmission line across five counties without the assent of the county commissions of those counties, but made those assents a condition of the certificate.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Ameren Transmission)
Company of Illinois for Other Relief or, in the Alternative,)
a Certificate of Public Convenience and Necessity)
Authorizing it to Construct, Install, Own, Operate,)
Maintain and Otherwise Control and Manage a)
345,000-volt Electric Transmission Line from Palmyra,)
Missouri, to the Iowa Border and Associated Substation)
Near Kirksville, Missouri.)

File No. EA-2015-0146

REPORT AND ORDER

Issue Date:

April 27, 2016

Effective Date:

May 27, 2016

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Ameren Transmission)
 Company of Illinois for Other Relief or, in the Alternative,)
 a Certificate of Public Convenience and Necessity)
 Authorizing it to Construct, Install, Own, Operate,)
 Maintain and Otherwise Control and Manage a) **File No. EA-2015-0146**
 345,000-volt Electric Transmission Line from Palmyra,)
 Missouri, to the Iowa Border and Associated Substation)
 Near Kirksville, Missouri.

REPORT AND ORDER

APPEARANCES

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REGULATORY LAW JUDGE: **Ronald D. Pridgin, Deputy Chief**

Procedural History

On May 29, 2015, Ameren Transmission Company of Illinois (“ATXI”) applied to the Missouri Public Service Commission (“Commission”) for a certificate of convenience and necessity to build a transmission line and associated facilities in the counties of Schulyer, Adair, Knox, Shelby, and Marion, Missouri. In the alternative, ATXI asks the Commission to dismiss the application on the grounds that ATXI is not a public utility.¹

The Commission received timely interventions requests from: Neighbors United Against Ameren’s Power Line (“Neighbors United”), United for Missouri (“UFM”), Midcontinent Independent System Operator (“MISO”), and IBEW Local Union 1439 (“Local 1439”). The Commission received no objection to those applications. Thus, the Commission granted intervention to those applicants. The Commission convened an evidentiary hearing on January 25-29, 2016, and received post-hearing briefs on March 4 and 18, 2016.

The Issues

On January 15, 2016, the parties filed an Issues List. The issues the parties present to the Commission for resolution are:

1. Does the Commission possess authority to approve ATXI’s application?
2. Does the evidence establish that the Mark Twain transmission line project, as described in ATXI’s application in this docket, and for which ATXI is seeking a certificate

¹ ATXI has apparently abandoned this argument, as this issue is not in the parties’ List of Issues, and ATXI did not argue the Commission lacked jurisdiction in its post-hearing briefs.

of convenience and necessity (“CCN”), is “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo?

3. Do §§ 393.170 and 229.100, RSMo, require that before the Commission can lawfully issue the requested CCN the evidence must show the Commission that where the proposed Mark Twain transmission line project will cross public roads and highways in that county ATXI has received the consent of each county to cross them? If so, does the evidence establish that ATXI has made that showing?

4. If the Commission decides to grant the CCN, what conditions, if any, should the Commission impose?

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence. Rather, it indicates that the omitted material was not dispositive of this decision.

Findings of Fact

Background

1. ATXI (formerly named Ameren Illinois Transmission Company) is an Illinois company dedicated to electric transmission infrastructure investment. ATXI presently is constructing approximately 375 miles of 345-kV transmission line that forms the Illinois Rivers Project, a line that runs from the Indiana border, across Illinois into Missouri.²

2. ATXI admits that it is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use, and a part of such lines ATXI plans to construct, own, and operate will be located in Missouri.³

3. ATXI has dubbed the transmission line for which it seeks a certificate of convenience and necessity the Mark Twain Project ("Mark Twain"). It would consist of approximately 95 miles of new 345-kV electric transmission line, a 2.2-mile 161-kV connector line, a substation and related facilities. The proposed 345-kV transmission line will be routed from the new Maywood Switching Station near Palmyra, Missouri, through Marion, Shelby, Knox and Adair counties to the new Zachary Substation, located near Kirksville, Missouri, and then continuing north through Adair and Schuyler counties to the Iowa border. The 345-kV transmission line will primarily consist of single-shaft, self-supported steel poles, 90-130 feet in height, within a 150-foot right of way. Also, a new 2.2-mile 161-kV line will connect the Zachary Substation with the existing

² Ex. 1, p. 4.

³ Application, ¶ 2 (filed May 29, 2015).

Adair Substation. These facilities will be constructed in a manner consistent with industry-wide standards. ATXI's expected total cost of Mark Twain along the route described above is approximately \$224 million.⁴

4. The breakdown of the estimated \$224 million cost is: two 345 kV lines at a cost of \$192.5 million; the Zachary substation, at a cost of \$27 million; a connector line between the Zachary and Adair substations, at a cost of \$2.6 million; and modifications at the Adair substation, at a cost of \$1.9 million.⁵

5. The Midcontinent Independent System Operation, Inc. ("MISO") is an independent, not-for-profit, and FERC-approved Regional Transmission Organization responsible for regional transmission planning, reliability assurance and managing competitive electricity markets across all or parts of 15 states, including Missouri, and the Canadian province of Manitoba. MISO's regional area of operations ("footprint") stretches from the Ohio-Indiana line in the east to eastern Montana in the west, and south to New Orleans.⁶

6. Mark Twain stems from a study conducted by MISO. In 2008, MISO began an extensive study of the regional electric transmission grid to identify transmission needs and develop a planning process to construct transmission projects to meet those needs. In 2011, MISO identified a "multi-value portfolio" ("MVP") of 17 transmission projects that would increase the overall reliability and efficiency of the regional transmission grid, meet public policy demands for renewable energy, and provide economic benefits in excess of the portfolio costs. Mark Twain consists of the

⁴ Id. at 5.

⁵ Ex. 3, pp. 10-11.

⁶ Ex. 3, p. 6.

Missouri portion of two of those MVP projects, MVP #7 and nearly all of #8 included in the MISO Transmission Expansion Plan in accordance with MISO's FERC-approved tariff.⁷

7. The costs to construct and operate MVP projects such as Mark Twain are reflected in transmission charges to load-serving entities in MISO's footprint, which in turn reflect charges they collect in their retail revenue requirements. Missouri represents just under 8% of the load in MISO. This means that less than 8% of the transmission charges arising from the Project will be paid by Ameren Missouri and other wholesale load-serving entities in Missouri. The remainder will be paid for by other load-serving entities across the MISO footprint.⁸

8. MISO's stakeholders include state regulatory commissions, consumer advocates, transmission owners, independent power producers, and environmental intervenors. The vast differences in the interests of those stakeholders ensure that MISO's decision to build transmission is not biased towards simply building more transmission.⁹

Certificate of convenience and necessity criteria

Need

Renewable energy

9. The 17 projects that comprise the MVP portfolio were determined by MISO and the MISO Board of Directors to be necessary to facilitate the delivery of

⁷ Ex. 1, pp. 5-6.

⁸ Ex. 1, p. 6.

⁹ Tr. Vol 9, pp. 603-05.

renewable energy, resolve numerous reliability issues, reduce transmission line losses and provide economic and efficiency benefits to customers throughout the MISO footprint. The portfolio is a “no regrets” portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.¹⁰

10. The benefits of Mark Twain are proven by multiple cost-benefit analyses. One such analysis was conducted by MISO as part of the MVP portfolio approval process, in which MISO evaluated the economics of the overall MVP portfolio under four scenarios. Those scenarios included two different “business as usual” cases (one with lower load growth and one using historical load growth), one scenario that assumed the continuation of current energy policies with the addition of some carbon limitations, and one scenario with even greater carbon-related regulation combined with the enactment of various new state and federal energy policies.¹¹

11. The MVP portfolio is a group of transmission projects distributed across the MISO footprint that enables the reliable delivery of the requirements of state policies regarding renewable energy (oftentimes referred to as RPS or RES mandates).¹²

12. Mark Twain will help Missouri meet its renewable energy obligations, even if no additional wind generation is developed in the relevant portions of Missouri.¹³

13. Mark Twain will also provide an additional means by which electricity may be delivered into and from Missouri, particularly from areas rich in wind energy. This delivery potentially increases available wind energy resources for compliance with Missouri’s renewable energy standard and with the EPA’s clean power plan (“CPP”). It

¹⁰ Tr. Vol. 5, p. 179, 194-95; Ex. 35, p. 16, 20, Sch. JTW-1.

¹¹ Ex. 35, Sch. JTW-1, p. 54.

¹² Ex. 35, p. 10.

¹³ Id. at 12.

will also encourage the development of wind as an electricity resource in Missouri by increasing the availability of transmission capacity in areas where that resource is available.¹⁴

14. Presently, The Empire District Electric Company, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company have sufficient sources of electricity and renewable energy attributes in place to exceed the maximum fifteen percent (15%) requirement, but Ameren Missouri does not.¹⁵

15. Ameren Missouri anticipates that its current resources will not allow it to meet its renewable energy standards requirements after 2018,¹⁶ but it plans to acquire 400 MW of wind capacity, starting in 2019 and have it in place by 2026.¹⁷

16. Mark Twain could help enable Ameren Missouri to comply with its renewable energy standards requirements and with the EPA's CPP.¹⁸

17. There is significant potential for wind development in north central and northeast Missouri, including in the Adair Wind Zone.¹⁹

18. The northeast Missouri Energy Zone has the opportunity for significant generation development, more specifically renewable generation in the form of wind generation. This region has topography and wind speeds favorable to the development of wind generation especially with current wind turbine technology.²⁰

¹⁴ Id. at 9-12.

¹⁵ Ex. 25, pp. 6-7.

¹⁶ File No. EO-2015-0084.

¹⁷ Id. at Ex. 12, p. 15.

¹⁸ Ex. 25, pp. 6-9.

¹⁹ Ex. 17, p. 5.

²⁰ Id. at 7.

Reliability

19. For northeast Missouri, including Kirksville, the project would maintain voltage levels if certain North American Electric Reliability Corporation ("NERC") Category C contingencies were to happen.²¹

20. The addition of the 345 kV lines and step down transformer at West Adair is especially effective in resolving 161 kV line overloads on the lines out of West Adair and preventing the loss of the generation at West Adair during certain NERC Category C events.²² This project will mitigate two bulk electric system (BES) NERC Category B thermal constraints and five NERC Category C constraints. It will also relieve three non-BES NERC Category B and two NERC Category C constraints.²³

21. Mark Twain is an integral part of a portfolio of MVPs that was approved by the MISO Board of Directors in December 2011 as necessary to facilitate the delivery of renewable energy, resolve numerous reliability issues, reduce transmission line losses, and provide economic and efficiency benefits to customers within the MISO footprint.²⁴

22. In 2008, MISO began the study process by undertaking a Regional Generation Outlet Study to investigate how best to fulfill various Renewable Portfolio Standards ("RPS") requirements reliably and efficiently by accessing wind resources located across the MISO footprint.²⁵

²¹ Ex. 29, p. 8.

²² Id. A Category C event is the loss of two or more bulk electric system elements, whereas a Category B event is the loss of a single bulk electric system element.

²³ Id.

²⁴ Ex. 3, p. 5.

²⁵ Ex. 3, p. 9.

23. During the study process, MISO and the stakeholders developed a robust business case for the MVPs which demonstrated that not only will the MVP Portfolio reliably enable RPS requirements to be met, but it will do so in a manner where its economic benefits exceed its costs. While the study focused upon the states' RPS requirements, the MVP Portfolio has widespread benefits beyond the delivery of wind and other renewable energy. It will enhance system reliability and efficiency under a variety of different generation build outs. It will also open markets to competition, reducing congestion and spreading the benefits of low cost generation across the MISO footprint. The projects in the 20 II MVP Portfolio were evaluated against MVP criteria and their ability to reliably enable the renewable energy mandates of the MISO states.²⁶

24. For a project to be an MVP, it must meet at least one of the following criteria: 1) it must be developed through the transmission expansion planning process to enable the system to deliver energy reliably and economically in support of documented energy policy or mandates; 2) it must give multiple types of economic value across multiple pricing zones with a total MVP benefit to cost ratio of 1.0 or higher; 3) it must address a least one transmission issue associated with a projected violation of a NERC or Regional Entity standard, and at least one economic-based transmission issue that gives economic value across multiple pricing zones.²⁷

25. Specifically, Mark Twain will increase reliability in the northeast portion of Missouri, including Kirksville.²⁸

²⁶ Id. at 9-10.

²⁷ Id. at 8-9

²⁸ Id. at 11.

26. Ameren Services determined that the northeastern Missouri area, including Kirksville, would be exposed to low voltages for certain contingency conditions at peak load levels. The existing transmission system has three 161-kV lines that supply Ameren Missouri and rural electric cooperative customers located in northeastern Missouri (including Adair, Kirksville, Newark, Novelty, Emerson, etc.). Ameren Services determined that if certain NERC Category C events occurred during peak load periods, then low voltage conditions would occur in northeastern Missouri that could result in the loss of customer load in the area. The addition of the Mark Twain Project will provide a new 345-kV source to the northeastern Missouri area that will maintain adequate system voltages for the identified NERC Category C contingencies and prevent loss of customer loads.²⁹

Transmission line losses

27. The 17 projects that comprise the MVP portfolio were determined by MISO and the MISO Board of Directors to be necessary to facilitate the delivery of renewable energy, resolve numerous reliability issues, reduce transmission line losses and provide economic and efficiency benefits to customers throughout the MISO footprint. The portfolio is a “no regrets” portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.³⁰

²⁹ Id. at 14.

³⁰ Ex. 3, p. 5; Tr. Vol. 5, p. 179, 194-95; Ex. 35, p. 16, 20., Sch. JTW-1.

Economic benefits

28. ATXI also performed an economic analysis of Mark Twain. The analysis found that Mark Twain would enable additional wind generation to support achievement of Missouri renewable requirements, thus demonstrating the need for. It also found that Mark Twain's development would be expected to decrease wholesale prices for electric power and decrease the costs of producing electricity to meet customer loads. Reductions in production costs, in turn, would lead to reductions in the charges for electric power to retail customers in Missouri that far outweigh the impact of transmission charges to Missouri load-serving entities (primarily Ameren Missouri) that would arise from Mark Twain. Thus, these reductions in payments for electric energy would far outweigh the ultimate impact of Mark Twain on Missouri customers' retail electric rates.³¹

29. In addition, ATXI's analysis reflects supplies of wind power that would be enabled by Mark Twain and that can support the achievement of state renewable energy targets. Finally, Mark Twain would also reduce emissions of carbon dioxide ("CO") generated throughout the MISO footprint, as well as reduce emissions of nitrogen oxides ("NOx"), sulfur dioxide ("SO2") and mercury from sources within Missouri. In total, these impacts would provide substantial benefits to Missouri.³²

30. MISO's Triennial Review identified benefits of \$21,451,000-\$66,816,000 associated with the cost of \$8,303,000-\$17,192,000 for the MVP portfolio.³³ The majority of the benefits are found in reducing congestion-driven production costs,

³¹ Tr. Vol. 5, pp. 193-196.

³² Ex. 3, pp. 4-5.

³³ Ex. 35, Sch. JTW-2 p. 26.

providing for more efficient dispatch of generators by using lowest cost generation throughout the MISO footprint. Mark Twain provides Missouri access to the region, zero production cost of the renewable energy, and takes advantage of the efficiencies of participation in the multi-state energy trading construct.³⁴

31. The MISO analyses were completed first in late 2011 when the MVP portfolio was approved, and were then updated in 2014, as part of the triennial review required by MISO's FERC-approved tariff. The MISO analyses demonstrate that there exist significant MISO-wide benefits from the entire MVP portfolio in every single scenario that was studied, with benefits exceeding the costs throughout the MISO footprint by 1.8 to 3.0 times.³⁵

32. Also, if a key element of the plan like Mark Twain is not built, economic benefits are lost and alternative but less optimal reliability solutions will have to be developed.³⁶

33. With Mark Twain in place, the transmission system can reliably and economically connect *and deliver* up to 1,347 MW of wind generation constructed in the Adair Wind Zone (designated by MISO as zone Mo-C), and thus a proposed 400 MW project in Schuyler County, and significantly more wind, can be connected and delivered from that zone.³⁷

³⁴ Id. at 15-16.

³⁵ Ex. 35, p. 16.

³⁶ Ex. 35, p. 13.

³⁷ Tr. Vol. 9, pp. 570, 692.

34. Also, Mark Twain was developed through MISO's MVP study process. That process was designed to support the achievement of state renewable energy requirements through infrastructure investments that minimized costs.³⁸

Benefits in excess of costs

35. The portfolio is a "no regrets" portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.³⁹

36. MISO's Triennial Review identified benefits of \$21,451,000-66,816,000 associated with the cost of \$8,303,000-\$17,192,000 for the MVP portfolio.⁴⁰

37. The majority of the benefits are found in reducing congestion-driven production costs, providing for more efficient dispatch of generators by using lowest cost generation throughout the MISO footprint. In all, the MVP portfolio creates benefit to cost ratios of 1.8 to 3.0 as identified under MTEP 2011 assumptions, and 2.6 to 3.9 as identified under Triennial Review assumptions. The Missouri ratios are 2.0 to 2.9 and 2.3 to 3.3, respectively.⁴¹

38. Most of the benefits that will accrue to Missouri are based upon reduced generation costs made possible by construction of the MVP portfolio.⁴²

³⁸ Ex. 21, pp. 4, 8.

³⁹ Tr. Vol. 5, p. 179, 194; Ex. 35, p. 20.

⁴⁰ Ex. 35, Sch. JTW-2, p. 26.

⁴¹ Ex. 35, pp. 15-16.

⁴² Ex. 35, Sch. JTW-2, p. 52.

Downward impact on wholesale costs

39. Regardless of whether Missouri has a Renewable Energy Standard, Mark Twain and the other MVP lines in the portfolio impact the production costs across the system, resulting in lower wholesale energy costs.⁴³

40. If Mark Twain is not in service, and if the wind is cheaper with the project than without, then Ameren Missouri ratepayers suffer. But adding the wind that Mark Twain could transmit would have a positive impact on Ameren Missouri ratepayers.⁴⁴

New generation, including combined cycle natural gas

41. The MVP portfolio facilitates the delivery of new generation throughout the MISO footprint, including new combined cycle natural gas generation. This is because one of the routing considerations used by MISO in determining the location of the MVPs was the new transmission lines' proximity to natural gas pipelines.⁴⁵

42. MISO's analysis balanced relative wind capacities with distances from natural gas pipelines and interconnection with the existing transmission infrastructure.⁴⁶

Access to wind zones

43. There is significant potential for wind development in north central and northeast Missouri, including in the Adair Wind Zone.⁴⁷

⁴³ Tr. Vol. 9, p. 594.

⁴⁴ Tr. Vol. 5, p. 194; Vol. 10, p. 745.

⁴⁵ Ex. 4HC, p. 40; Ex. 35 p. 12.

⁴⁶ Ex. 35, pp. 11-12.

⁴⁷ Ex. 17, p. 5.

44. The northeast Missouri Energy Zone has the opportunity for significant generation development, more specifically renewable generation in the form of wind generation. This region has topography and wind speeds favorable to the development of wind generation especially with current wind turbine technology.⁴⁸

45. With Mark Twain in place, the transmission system can reliably and economically connect *and deliver* up to 1,347 MW of wind generation constructed in the Adair Wind Zone (designated by MISO as zone Mo-C), and thus a proposed 400 MW project and significantly more wind can be connected and delivered from that zone.⁴⁹

46. Mark Twain, as part of the MVP portfolio, will provide additional transfer capability for wind resources that may choose to construct in Northeast Missouri and allow them to provide energy to states throughout the Midwest.⁵⁰

47. The Adair Wind Zone presents wind farm siting opportunities due to its topography and wind speeds.⁵¹ MISO conducted a study, evaluating, among other things, “optimal wind conditions,” with the intent to “optimize wind generation placement.”⁵²

48. The characteristics of the Adair Wind zone, combined with Mark Twain’s proximity to it and the ability to transmit energy generated within the zone, create the potential for up to 1,347 megawatts of wind generation to be developed in northeast Missouri.⁵³

⁴⁸ Id. at 7.

⁴⁹ Tr. Vol. 9, p. 570.

⁵⁰ Ex. 4, p. 39.

⁵¹ Ex. 17, p. 7.

⁵² Ex. 29, p. 6.

⁵³ Ex. 17, pp. 6-7.

49. Another reason the additional wind generation is expected is its low cost relative to other renewable resources. Looking at the levelized cost of energy, and based on current technologies, wind-generated electricity is lower cost than solar-generated electricity.⁵⁴ Moreover, the Production Tax Credit, originally scheduled to expire at the end of 2016, was extended until 2019.⁵⁵ The credit encourages future wind development by providing a tax credit to wind developers for a generation project started by the end of 2019.⁵⁶

50. The location of Mark Twain near the Adair Wind zone, the relatively low cost of wind as a renewable resource, and the extension of the relevant tax credits until 2019, all encourage the construction of wind generation, and increase the likelihood of wind farms delivering electricity onto Mark Twain. MISO recently added a 400 MW wind generation project into its queue, which is proposed to connect to the completed Mark Twain project 345 kV line in Schuyler County.⁵⁷

Congestion

51. MISO's analysis shows Mark Twain will distribute economic benefits from reduced congestion and production costs.⁵⁸

52. Mark Twain "will also increase reliability in the Northeast portion of Missouri, including the Kirksville area."⁵⁹ If built, Mark Twain would allow the areas it

⁵⁴ Ex. 12, pp. 8-10.

⁵⁵ Tr. Vol. 7, pp. 512-513.

⁵⁶ Id.

⁵⁷ Tr. Vol. 5, pp. 203-04.

⁵⁸ Ex. 35, pp. 10, 14-16; Ex. 21, p. 6.

⁵⁹ Ex. 3, p. 11

covers in northeast Missouri to “maintain voltage levels if certain NERC Category C contingencies were to happen under certain system conditions.”⁶⁰

53. Mark Twain is “critical to resolving 161-kV overloads in northeast Missouri . . . since [g]enerator interconnection studies for projects in northeast Missouri consistently show significant overloads on the existing 161-kV system when attempting to add new generation.”⁶¹

54. The addition of the 345 kV lines and step down transformer at West Adair is especially effective in resolving 161 kV line overloads on the lines out of West Adair and preventing the loss of the generation at West Adair during certain NERC Category C events. This project will mitigate two bulk electric system (BES) NERC Category B thermal constraints and five NERC Category C constraints. It will also relieve three non-BES NERC Category B and two NERC Category C constraints.⁶²

Meeting local load needs

55. Mark Twain provides an outlet for generation in the Adair Wind Zone and from outside Missouri to load centers, including load centers in Missouri.⁶³

56. Mark Twain is necessary to meet local load serving needs of the system in the area.⁶⁴

⁶⁰ Ex. 29, p. 8.

⁶¹ Ex. 17, p. 6.

⁶² Ex. 35, Sch. JTW-1, p. 34.

⁶³ Ex. 17, p. 6.

⁶⁴ Ex. 35, pp. 9, 14; Ex. 3, p. 14.

Redundancy to enhance grid reliability

57. The new lines “will provide reliability benefits by mitigating a number of contingent outage events during peak and shoulder periods, where the wind generation component is much higher.”⁶⁵

58. Mark Twain “is especially effective in resolving 161 kV line overloads on the lines out of West Adair during certain NERC Category C events.”⁶⁶

59. The addition of Mark Twain will provide a new 345-kV source to the northeastern Missouri area that will maintain adequate system voltages for the identified NERC Category C contingencies and prevent loss of customer loads.⁶⁷

Qualified to provide the service

60. The significant experience of ATXI’s executive personnel shows that it has the qualifications needed to own, operate, control and manage Mark Twain.⁶⁸

61. Maureen A. Borkowski, BSME, is the president of ATXI and senior vice-president of Ameren Services Company, and has worked continuously at affiliates of Ameren Corporation since 1981, except when she privately consulted for over four years from 2000 to 2005, primarily with regard to activities relating to transmission.⁶⁹

⁶⁵ Ex. 29, pp. 7-8.

⁶⁶ Id.

⁶⁷ Ex. 3, p. 14.

⁶⁸ Ex. 25, pp. 10-11.

⁶⁹ Ex. 1, pp. 1-2.

62. James Jontry, BSE, MBA, PE (Missouri), is employed by Ameren Services Company as the senior project manager who is responsible for the planning, execution, completion and operational integration of Mark Twain.⁷⁰

63. David Endorf, MSCE, PE (Missouri and Illinois), is employed by Ameren Services Company to design transmission line projects, including Mark Twain for Ameren affiliates.⁷¹

64. Dennis D. Kramer, BS Electrical Technology, MBA, with 35 years of experience in the regulated electric utility industry, is employed by Ameren Services Company as Senior Director of Transmission Policy, Planning and Stakeholder Relations, and provides support services including engineering, construction management, planning, finance, accounting and legal services.⁷²

65. In addition to providing personnel who are planning, executing, completing and carrying out the operational integration of the project, ATXI has access to Ameren Services personnel who will operate and maintain the project.⁷³

Financial ability

66. ATXI is a subsidiary of Ameren Corporation ("Ameren").⁷⁴

67. Ameren has investment grade credit ratings from Standard & Poor's, Moody's and Fitch Ratings. Ameren's investment grade credit ratings are supported by its ownership of Ameren Missouri and Ameren Illinois.⁷⁵

⁷⁰ Ex. 19, pp. 1-2.

⁷¹ Ex. 13, pp. 1-2.

⁷² Ex. 3, pp. 1-4.

⁷³ Ex. 1, p. 4.

⁷⁴ Ex. 31, p. 2.

68. Further, as of June 30, 2015, Ameren had \$364 million of direct borrowing capacity.⁷⁶

69. Simply based on Ameren's remaining borrowing capacity, ATXI has the ability to raise the projected \$224 million of capital needed for Mark Twain.⁷⁷

Economically feasible

70. Mark Twain is economically feasible because ATXI will receive payments for the construction and operation of the project through MISO's Open Access Transmission Tariffs.⁷⁸

71. Mark Twain is economically feasible because the project was developed through MISO's MVP study process. That process was designed to support the achievement of state renewable energy requirements through infrastructure investments that minimized costs.⁷⁹

72. ATXI's shareholders are willing to finance the project, which also shows economic feasibility.⁸⁰

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

⁷⁷ *Id.*

⁷⁸ Ex. 32, p. 2

⁷⁹ Ex. 21, pp. 4-8.

⁸⁰ Tr. Vol. 5, p. 120-21.

Public interest

Cost/benefit

73. The appropriately balanced overall cost-benefit ratio for the MVP portfolio for the areas of Missouri located in the MISO region is 2.0-2.9.⁸¹

74. In 2014, a required triennial review of the 2011 MTEP, including Mark Twain, increased the projected cost-benefit ratio of the areas of Missouri located in the MISO region, where Mark Twain is located, to 2.3-3.3.⁸²

Health

75. Anything that generates, transmits or uses electricity has both an electric field and a magnetic field in the space surrounding it.⁸³

76. These fields, generated at a power frequency of 60 Hertz (the frequency of the proposed transmission line in this case), are commonly referred to as EMF.⁸⁴

77. Because all lines, devices, appliances, and wiring connected to the AC electric power system produce EMF at this frequency, these fields are virtually everywhere – including at background levels in homes in the United States.⁸⁵

78. And because electric fields are blocked by most conductive objects (trees, fences, walls, the human body, etc.) and magnetic fields are not, EMF most often refers

⁸¹ Ex. 64, p. 4.

⁸² *Id.*

⁸³ Ex. 5, p. 6.

⁸⁴ *Id.* at 4.

⁸⁵ *Id.* at 7.

to and is primarily concerned with the magnetic fields produced by power sources such as the proposed transmission line.⁸⁶

79. Reliable and recent studies have failed to show a correlation between EMF and childhood leukemia.⁸⁷

80. Almost 40 years of research has failed to confirm any adverse health effects from EMF levels found in our environment, including exposure levels found near high-voltage transmission lines.⁸⁸

81. Also, EMF has not been demonstrated to adversely affect bee health or productivity.⁸⁹

82. ATXI presented credible evidence of calculations of the magnetic fields at average loading on Mark Twain in relation to the nearest residence for each segment of the route. These ranges fell into the range of magnetic fields similar to those that would be measured in residences in the absence of a transmission line.⁹⁰

83. Mark Twain will not be a source of stray voltage, thereby it poses no threat to cattle, livestock or people.⁹¹

⁸⁶ *Id.* at 4.

⁸⁷ *Id.* at 22.

⁸⁸ *Id.*

⁸⁹ *Id.* at 39-41.

⁹⁰ *Id.* at 29-30.

⁹¹ *Id.* at 32; Ex. 14, pp. 4-5.

Environment

84. Routing principles that ATXI considered during route selection included minimizing impacts to natural resources such as wetlands, woodlands and wildlife, and avoiding federal and state lands and conservation and restricted easement areas.⁹²

85. After consulting with the Missouri Department of Conservation (“MDC”), the Missouri Department of Natural Resources, and U.S. Fish & Wildlife Service. ATXI made adjustments to the proposed routes under consideration in order to minimize stream crossings, wetlands, and other route considerations.⁹³

86. The selection of the final routes also took into account environmental concerns. In the Maywood to Zachary portion of the route, the final route crossed fewer acres of wetland, avoided crossing federally-owned or operated lands and state-owned wildlife refuges, parks and conservation areas, and avoided Natural Resources Conservation Service watershed easements.⁹⁴

87. While the final route for this segment crosses approximately 0.8 acres of a privately-owned, state-operated easement along the South Fabius River, selection of this segment avoided crossing 3.9 acres of a similar state-operated, privately-owned easement located on the alternate route.⁹⁵

88. ATXI considered environmental concerns – including those raised by the MDC – when it selected the southern route as the final route in the Maywood to Zachary segment of the line.⁹⁶

⁹² Ex. 15, p. 8.

⁹³ *Id.* at pp. 11-12, 16.

⁹⁴ *Id.* at 23.

⁹⁵ *Id.*; Ex. 16, p. 11.

⁹⁶ Ex. 16, p. 11.

89. Environmental concerns were also considered in the selection of the final route in the Zachary to Iowa state line segment of the transmission project. The alternative selected as the final route for this segment minimized the length across forested lands and avoided crossing any state- or federally-owned or operated lands, such as wildlife refuges, state parks and conservation areas.⁹⁷

90. The final route will not cross any of the locations identified as known habitats for Indiana bats.⁹⁸

Farming

91. Less than one acre of actual farmland will be taken out of production for the entire 95-miles of 345-kV line.⁹⁹

92. While the actual easement area includes 523 agricultural acres, less than one acre of farmland will be removed from production because the only land permanently removed from cultivation is the area of the footprint of the foundations for the monopole structures.¹⁰⁰

93. One of the benefits of using such a structure is to minimize the line's contact points with the land and allow better maneuverability around the structures.¹⁰¹

94. ATXI has agreed to compensate landowners for damages associated with constructing the project.¹⁰²

⁹⁷ Ex. 15, pp. 26-27.

⁹⁸ Tr. Vol. 7, pp. 469-74.

⁹⁹ Ex. 7, p. 6; Tr. Vol 7, p. 488.

¹⁰⁰ Ex. 7, p. 6; Ex. 8, p. 5.

¹⁰¹ Ex. 14, pp. 3-4.

¹⁰² Tr. Vol. 5, pp. 260-61.

95. Although the final route runs diagonally on some parcels, the final route selected by ATXI was less diagonal than the alternative routes.¹⁰³

96. Also, paralleling transmission lines, as suggested by Neighbors United, increases the likelihood of common-mode failures – the likelihood that a line failure will cause an adjacent line to fail.¹⁰⁴

97. Further, burying the line could increase the cost of the project tenfold.¹⁰⁵

98. There should be no impact on farming operations outside the easement area and, for that matter, only minimal farming-related impacts inside the easement area around the footings as farmers may continue to use the land under the transmission lines.¹⁰⁶

99. It is unlikely that additional land would need to be removed from production because ground-based applications can be used to cover areas no longer suitable for aerial application.¹⁰⁷

100. The steel monopoles are designed to meet or exceed the National Electric Safety Code and will be able to withstand an extreme wind load of almost 100 miles per hour.¹⁰⁸

101. The conductors are designed to withstand the loads imposed by 1 inch of radial ice, along with a 40-mile per hour wind. The line is protected with relays that will

¹⁰³ Tr. Vol. 7, p. 465.

¹⁰⁴ Ex. 11, pp. 3-6.

¹⁰⁵ Tr. Vol. 7, pp. 501-502.

¹⁰⁶ Ex. 8, p. 4.

¹⁰⁷ Ex. 10, p. 7.

¹⁰⁸ Ex. 41, p. 6; Ex. 14, p. 5.

open breakers to take the line out of service in the highly unlikely event where a conductor would break and fall to the ground.¹⁰⁹

102. ATXI will address the soil compaction caused by construction activity by restoring the land using a deep ripper unless the landowner desires to make other arrangements.¹¹⁰

103. ATXI will either compensate the owner for any compaction caused by construction activities or have a restoration contractor remove the compaction so that crop yields would not be compromised.¹¹¹

104. If soil issues remain following reclamation efforts, ATXI's procedures provide that ATXI will pay damages to the landowner.¹¹²

105. High-voltage transmission lines do not interfere with GPS systems due to frequency separation.¹¹³

106. The proposed transmission line will operate at 60 Hertz, which is an extremely low frequency, while GPS systems operate in the frequency range of 1.2 billion to 1.5 billion Hertz. Because they operate at two different ends of the spectrum, there is no opportunity for one to interfere with the other.¹¹⁴

107. ATXI identified and avoided all known pivot irrigation systems along the transmission line route.¹¹⁵

¹⁰⁹ Ex. 14, p. 5.

¹¹⁰ Ex. 10, p. 5; Ex. 8, Sch. DBR-SR2.

¹¹¹ Tr. Vol. 5, p. 252.

¹¹² Ex. 10, p. 5.

¹¹³ Ex. 6, p. 6.

¹¹⁴ Id. at pp. 4-6.

¹¹⁵ Ex. 16, p. 6.

108. Transmission line monopoles do not prohibit the future use of pivot irrigation on a particular parcel because the systems may be designed to operate exclusive of the area where the monopoles are located.¹¹⁶

109. Although it would be rare that an irrigation system could not be accommodated during construction, the inability to install a center pivot irrigation system or other irrigation systems would be factored into the compensation ATXI offered the landowner.¹¹⁷

110. Only if the presence of a transmission line would be entirely inconsistent with land used for a federal Conservation Reserve Program (“CRP”) would a CRP contract be cancelled. Should this occur, such damages would eligible for reimbursement.¹¹⁸

Amish-Mennonite concerns

111. The proposed line traverses only one property identified by Neighbors United as having an Amish or Mennonite owner.¹¹⁹

112. That family’s residence is located almost one-half mile from the route.¹²⁰

¹¹⁶ Tr. Vol. 7, pp. 309-10, pp. 325-26.

¹¹⁷ Ex. 8, p. 9; Tr. Vol. 5, p. 259.

¹¹⁸ Ex. 10, p. 10.

¹¹⁹ *Joint Report on the Location of ATXI’s Transmission Line in Relation to Identified Amish and Mennonite-owned Properties*, ¶ 6 (filed February 19, 2016).

¹²⁰ *Id.* at Ex. C; Tr. Vol. 5, p. 242.

Land values

113. Any loss in fair market value of a property due to a transmission line easement is something properly considered in the appraisal process in condemnation cases.¹²¹

County assents

114. ATXI does not have county commission permissions for Mark Twain to cross public roads and highways.¹²²

Other conditions on certificate

115. The conditions upon the certificate as agreed upon by ATXI and Staff, which are listed in the ordered paragraphs below, are reasonable.¹²³

Conclusions of Law

1. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.¹²⁴

¹²¹ Ex. 9, pp. 2-3.

¹²² Tr. Vol 5, p. 95.

¹²³ Ex. 25, p. 16; Ex. 2, p. 3; Ex. 14, pp. 8-9; Ex. 33; Tr. Vol. 5, p. 233-34; Ex. 25, p. 17; Ex. 2, pp. 5-6; Ex. 34;

¹²⁴ Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 382 (Mo. App. 2005).

2. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.¹²⁵

3. Testimony need not be refuted or controverted to be disbelieved by the Commission.¹²⁶

4. The Commission determines what weight to accord to the evidence adduced.¹²⁷

5. The Commission may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."¹²⁸

6. The Commission may evaluate the expert testimony presented to it and choose between the various experts.¹²⁹

7. The Commission has general supervisory authority over all "electrical corporations." Specifically, the Commission has authority over electrical corporations and their plant that are created "for the purpose of furnishing *or transmitting* electricity for light, heat, or power."¹³⁰

8. Section 386.020(15), RSMo (Cum. Supp. 2013) defines "electrical corporation" as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to

¹²⁵ *State ex rel. Associated Natural Gas Co. v. Public Service Com'n*, 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).

¹²⁶ *State ex rel. Rice v. Public Service Com'n*, 220 S.W.2d 61, 65 (Mo. banc 1949).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Associated Natural Gas, supra*, 706 S.W.2d at 882.

¹³⁰ Section 393.140(1) (emphasis supplied).

others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes for its own use or the use of its tenants and not for sale to others.

9. “Electric plant” includes:

all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, *transmission*, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power (emphasis added).¹³¹

10. ATXI is an electric utility and a public utility subject to Commission jurisdiction.¹³²

11. The Right to Farm Amendment to The Missouri Constitution provides that “the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state”¹³³

12. The Commission has no authority to rule on the constitutionality of a statute.¹³⁴

13. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.¹³⁵

¹³¹ Section 386.020(14).

¹³² Section 386.020(15), (42) RSMo. Cum. Supp. 2013.

¹³³ Mo. Const., Art. 1, § 35.

¹³⁴ See, e.g., *Duncan v. Missouri Bd. For Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo.App. 1988); *Fayne v. Department of Social Services*, 802 S.W.2d 565 (Mo.App. 1991).

¹³⁵ See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc. 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

14. However, constitutional issues must be raised at the first opportunity,¹³⁶ and the Commission must frequently interpret statutory and constitutional provisions to adjudicate the issues within the scope of its jurisdiction.¹³⁷

15. Prior to constructing the requested facility, ATXI must receive a certificate of convenience and necessity from the Commission.¹³⁸

16. The Commission may impose conditions on the certificate of convenience and necessity that it finds reasonable and necessary.¹³⁹

17. The Commission may grant a certificate of convenience and necessity when it determines, after due hearing, that the proposed project is “necessary or convenient for the public service”.¹⁴⁰

18. The term “necessity” does not mean “essential” or “absolutely indispensable”, but rather that the proposed project “would be an improvement justifying its cost”.¹⁴¹

19. It is within the Commission’s discretion to determine when the evidence indicates that the public interest would be served by the award of the certificate.¹⁴²

20. “The Commission has traditionally used five criteria to determine whether to grant a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the

¹³⁶ See *State ex. rel. MoGas Pipeline LLC v. Public Service Com’n*, 395 S.W.3d 562, 568 (Mo.App. W.D. 2013).

¹³⁷ See, e.g., *Missouri Southern R. Co. v. Public Service Com’n*, 214 S.W. 379, 380 (Mo. 1919).

¹³⁸ Section 393.170.

¹³⁹ Section. 393.170.3 RSMo.

¹⁴⁰ Section 393.170.

¹⁴¹ See, e.g., *State ex. rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo.App. 1973).

¹⁴² *State ex. rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo.App. 1975).

applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.”¹⁴³

21. “The requirement that an applicant's proposal promote the public interest is in essence a conclusory finding. . . . Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.”¹⁴⁴

22. “No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.”¹⁴⁵

23. “When consent by a . . . county is required, approval shall be shown by a certified copy of the document granting the consent . . . , or an affidavit of the applicant that consent has been acquired.”¹⁴⁶

¹⁴³ Report and Order, *In re Application of Tartan Energy Company, L.C. d/b/a Southern Missouri Gas Company for a Certificate of Convenience and Necessity*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994) 1994 WL 762882, *3 (Mo. P.S.C.)

¹⁴⁴ *In re Tartan*, 3 Mo.P.S.C.3d at 189.

¹⁴⁵ § 229.100 RSMo.

¹⁴⁶ Commission Rule 4 CSR 240-3.105(1)(D)1.

24. “If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.”¹⁴⁷

25. The Court of Appeals stated, “Section 229.100 simply prohibits public utilities from erecting power lines without first having obtained the assent of the county commission of such county therefore.”¹⁴⁸

26. A certificate of convenience and necessity does not override or repeal any existing authority of municipalities or counties. It simply allows the utility “to exercise the rights and privileges presumably already conferred upon it by state charter and municipal consent.”¹⁴⁹

Decision

Applying the above Findings of Fact and Conclusions of Law, the Commission reaches the following decision:

Authority to rule on application

Neighbors United claims that ATXI requests relief that would permanently remove citizens’ property from production and prevent these citizen farmers and ranchers from engaging in farming and/or ranching practices. Neighbors United asserts that if the Commission were to grant ATXI the CCN to construct and operate this transmission line, such action would infringe on its members’ ability to engage in

¹⁴⁷ Commission Rule 4 CSR 240-3.105(2).

¹⁴⁸ *Stopaquila.org v. Aquila, Inc.*, 180 S.W.3d 24, 40 (Mo.App. W.D. 2005).

¹⁴⁹ *Id.* (emphasis supplied) (citing *State ex. inf. Shartel v. Missouri Utilities Co.*, 331 Mo. 337, 53 S.W.2d 394, 399 (1932)).

farming or ranching in violation of the Right to Farm Amendment to the Missouri Constitution.

This assertion fails to distinguish between the legal significance of granting a CCN based upon a determination that the proposed project is in the public interest and the taking of property through eminent domain proceedings. The former is within the purview of the Commission, while the latter is within the exclusive jurisdiction of Article III courts.¹⁵⁰ Accordingly, because the potential issuance of a CCN does not, in and of itself, deprive any member of Neighbors United of the ability to farm or ranch, the cited constitutional provision cannot provide the basis for denying the Application. The Commission has authority to rule on ATXI's application.

Certificate of convenience and necessity

The Commission finds that ATXI has shown it is entitled to a CCN. ATXI has shown a need for Mark Twain, qualifications to own and operate it, the financial ability to build it, the economic feasibility of building it, and the public interest that would be served by building it. Notably, there is a benefit to Missouri ratepayers if this CCN is granted. Thus, ATXI has satisfied the *Tartan* criteria.

The Commission has great sympathy for the affected individual landowners, particularly those in the Amish and Mennonite communities who have certain values and beliefs that are in conflict with the project. But the Commission must balance the direct but narrow property interests of a few against the indirect but broad economic and environmental interests of the general public.

¹⁵⁰ Section 523.010, .262 RSMo.

In this case, the project is in the public interest because it is needed to:

- Promote grid reliability
- Relieve congestion
- Promote renewable energy
- Meet local load serving needs
- Provide downward pressure on customer rates

The Commission grants ATXI the certificate of convenience and necessity.

County assents

However, the Commission will impose a condition of acquiring county assents upon the certificate. ATXI does not have assent from any of the counties through which Mark Twain would run. ATXI must get assent from each county through which Mark Twain would run before the certificate becomes effective. The Commission believes the plain language of § 229.100 RSMo and its own rules require as much. If, however, a reviewing court determines that § 229.100 RSMo does not require ATXI to obtain these assents, this condition will, of course, be null and void.

The Commission understands ATXI's argument that county assent is required for an "area certificate" to serve retail customers, but is not required for a transmission "line certificate" which it seeks.¹⁵¹ The Commission finds all of the applicable cases distinguishable from the case at bar.

¹⁵¹ See, e.g., *Cass County v. Pub. Serv. Com'n*, 259 S.W.3d 544, 548-49 (Mo.App. W.D. 2008)(otherwise known as "Aquila II")(wherein the Court referred to the authority needed to build a transmission line as a line certificate, and the authority needed to exercise a franchise by serving customers as an area certificate. See also *Stopaquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo.App. W.D. 2005)(otherwise known as "Aquila I"); *State ex. rel. Harline v. Pub. Serv. Com'n*, 343 S.W.2d 177, 182-85 (Mo.App. 1960).

In *Harline*, the Court held that the utility did not need a line certificate to build a transmission line in an area where it already had an area certificate. *Aquila I* held that the utility's construction of a new power plant was subject to county zoning. And *Aquila II* held that the Commission could not lawfully approve a power plant after it was built. In all these cases, the utility had one or more area certificates.

The Commission finds some language from *Aquila II* instructive; it states

“(T)his court has held, in *Harline*, that it is not necessary for a utility to obtain a new line certificate before extending transmission lines through its certificated area . . . Utilities must, nonetheless, obtain line certificates to extend transmission lines beyond their certificated areas.”¹⁵²

That language reflects only two possibilities: either a transmission line through territory for which a utility holds an area certificate, or a transmission line beyond the territory for which a utility holds an area certificate. In both instances, the utility has an area certificate.

But ATXI would have the Commission stretch the holding of *Harline* to read that county commission approval is not necessary for a new line certificate even when a utility does not already hold an area certificate. *Harline* and its progeny did not contemplate a utility having a line certificate without a corresponding area certificate, and thus did not address circumstances where a utility has not already sought county or municipal consent. The Commission is loath to allow a utility a novel end run around a statutorily required county commission approval simply because the utility would not serve retail customers.

¹⁵² *Aquila II*, 259 S.W.3d at 552, fn. 6 (emphasis added).

Conditions

In addition, the Commission finds the conditions agreed to by Staff and ATXI to be reasonable, and thus, will impose them.

THE COMMISSION ORDERS THAT:

1. The application for a certificate of convenience and necessity to construct the Mark Twain Project is granted, subject to the conditions listed below.

2. The certificate is contingent upon ATXI providing certified copies of county assents for the Mark Twain Project from Marion, Shelby, Knox, Adair, and Schuyler Counties, Missouri.

3. The plans and specifications for construction of the proposed Mark Twain Project that ATXI is developing shall be filed with the Commission as required by 4 CSR 240-3.105(1)(B)2.

4. Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to abide by the depicted route on each of the 377 parcels identified as of the filing of its application as parcels over which an easement will be required, but will be allowed to deviate from the depicted route within one of the 377 parcels in two scenarios:

First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the depicted route on a particular parcel if ATXI and the landowner agree, *e.g.*, upon request of the landowner and ATXI's agreement with the request. Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if

agreement can be reached ATXI may deviate from the depicted route on that parcel, as agreed with the affected landowner. With respect to any parcel other than the 377 identified parcels where ATXI determines that testing or surveys necessitate acquisition of an easement on that parcel, ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed and, if agreement is reached, may deviate from the depicted route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel. If agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the depicted route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff and Public Counsel, the Commission will grant or deny the request.

5. Absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied

by the property owners will be removed or located in the easement requiring the owners to move or relocate from the property.

6. Prior to the commencement of construction on a parcel, ATXI will secure an easement which will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel. In addition, ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

7. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in *Schedule DB-R-2* attached to Dan Beck's Rebuttal Testimony.

8. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in *Schedule DB-R-2* attached to Dan Beck's Rebuttal Testimony.

9. Because the following rules do not pertain to ATXI due to their lack of retail customers, the Commission finds good cause to waive them, and so waives them: Commission Rules 4 CSR 240-3.145, .165, .175, 190(1), (2), (3)(A)-(D).

10. All pending motions and other requests for relief not granted are denied.

11. This Report and Order shall become effective on May 27, 2016.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, CC., concur.
Coleman, C., concurring opinion attached.

Dated at Jefferson City, Missouri,
on this 27th day of April, 2016

Concurring Opinion for EA-2015-0146

I am voting in support of this order but I am compelled to note for the record, my concerns about this project and the decision we've had to make here today.

The evidence supported the assertion that ATXI meet four of the five elements required for the Certificate of Convenience and Necessity. Those include need, qualifications, financial ability, and economic feasibility.

The fifth element, public interest is the one that is debatable. On one hand, it is undeniable that this project will benefit many consumers, both in and outside of Missouri.

In addition, the project itself could generate jobs and yield economic benefits provided that Missourians are utilized for these opportunities. I would strongly encourage employing Missouri residents as much as possible for this project.

The evidence provided through the evidentiary hearings, depositions, and briefs show that ATXI took care to address various concerns, including those about the impact this would have on wildlife along the proposed transmission line route.

It should be understood that in granting this CCN, the Commission is in no way minimizing how this project affects the Amish and Mennonite communities.

In an ideal world, we could find a compromise that would meet the needs of all, instead of the leaning towards what benefits the majority. Unfortunately, that is not the world in which we currently live.

Commissioner Maida J. Coleman

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Staff of the Missouri Public Service)
Commission)

Complainant,)

v.)

File No. EC-2015-0309

Kansas City Power & Light Company)
And)
KCP&L Greater Missouri Operations)
Company)

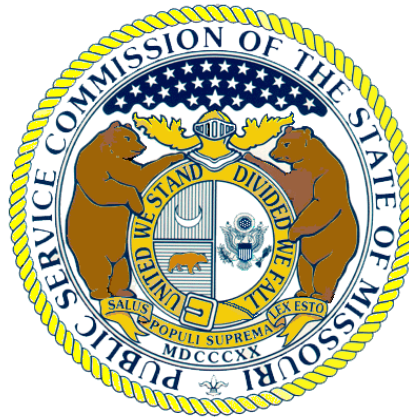
Respondents.)

ELECTRIC

§22. Revenue

When customers called an electric corporation, the electric corporation transferred some of those customers to another entity that offered to sell the customer more services, and the transfer included the specific customer's information. That conduct violated a Commission rule, barring an electric corporation from making specific customer information available to another entity, affiliated or unaffiliated. The Commission ordered the electrical corporation to cease that conduct, and altered the accounting treatment for the revenue that the electric corporation generated from referring calls, but did not seek monetary penalties for that conduct.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Staff of the Missouri Public Service
Commission

Complainant,

v.

Kansas City Power & Light Company

And

KCP&L Greater Missouri Operations
Company

Respondents.

File No. EC-2015-0309

REPORT AND ORDER

Issue Date: April 27, 2016

Effective Date: May 27, 2016

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	<u>File No. EC-2015-0309</u>
	)	
Kansas City Power & Light Company	)	
	)	
And	)	
	)	
KCP&L Greater Missouri Operations Company	)	
	)	
Respondents.	)	

APPEARANCES

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For the Staff of the Missouri Public Service Commission.

Tim Opitz, Senior Counsel, and **Cydney Mayfield**, Deputy Public Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

Chief Regulatory Law Judge: **Morris L. Woodruff**

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

The Commission's Staff filed this complaint against Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO) on May 20, 2015, alleging that KCP&L and GMO's contractual relationship with Allconnect, Inc. violates several statutes and Commission regulations. KCP&L and GMO filed a timely answer on June 22, 2015. The parties prefiled direct, rebuttal, and surrebuttal testimony, and an evidentiary hearing was held on January 19 and 20, 2016. The parties filed initial post-hearing briefs on February 11, 2016, and reply briefs on February 25, 2016.

Findings of Fact

1. KCP&L is a Missouri general business corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. KCP&L is an “electrical corporation” and a “public utility” subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo 2000.¹

2. GMO is a Delaware general business corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. GMO is an “electrical corporation” and a “public utility” subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo 2000.²

2. Both KCP&L and GMO are wholly-owned subsidiaries of Great Plains Energy, Inc., a publically-traded Missouri general business corporation and a public utility holding company, also located at 1200 Main Street, Kansas City, Missouri 64105.³

3. KCP&L and GMO provide retail electric service to areas in Metropolitan Kansas City, Missouri, and in other areas of western Missouri. Together, they serve 565,000 residential, commercial, and industrial customers in 36 Missouri counties. KCP&L also has retail and wholesale service territory in 11 counties in the State of Kansas.⁴

4. Effective April 30, 2013, Great Plains Energy Services Incorporated (GPES) acting on behalf of itself and its affiliates, KCP&L and GMO, entered into a Direct Transfer Service Agreement with Allconnect, Inc.⁵

¹ Staff’s Complaint, Paragraph 7. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

² Staff’s Complaint, Paragraph 8. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

³ Staff’s Complaint, Paragraphs 7 and 8. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

⁴ Staff’s Complaint, Paragraph 9. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

⁵ Hyneman Direct, Ex. 3, Schedule CRH-d2. Hyneman filed direct testimony on behalf of Staff, but subsequently changed his employment to the Office of the Public Counsel and offered surrebuttal testimony on behalf of that entity. Hyneman’s direct testimony was adopted by Staff’s witness Keith

5. GPES is also a direct wholly-owned subsidiary of Great Plains Energy, Inc. It is used as a contracting vehicle to eliminate redundant administrative expense when negotiating duplicate contracts that would otherwise be required when contracting for goods or services needed by both KCP&L and GMO. The use of GPES as a contracting vehicle began in 2008, when Great Plains Energy, Inc. acquired what would be the GMO system from Aquila.⁶

6. Aside from signing the contract with Allconnect, GPES has no other involvement in the transaction.⁷

7. Allconnect is a corporation headquartered in Atlanta, Georgia. Dwight Scruggs, Senior Vice President of Client Services and Business Development for Allconnect⁸ testified on behalf of KCPL/GMO. Scruggs described Allconnect as “a leading multi-channel marketplace that simplifies the purchase of services for the connected home”.⁹ Allconnect does that by offering its services to customers of major utilities and home service providers by assisting them in transferring or establishing other household services such as communication bundles, video, internet, home phone, and home security through a variety of service providers.¹⁰

8. Consumers pay nothing to Allconnect for its services.¹¹ Rather, Allconnect is

Majors for purposes of cross-examination.

⁶ Ives Rebuttal, Ex. 101, Page 4, Lines 9-23.

⁷ Ives Rebuttal, Ex. 101, Page 7, Lines 9-22.

⁸ Scruggs Rebuttal, Ex. 103, Page 1, Lines 17-18.

⁹ Scruggs Rebuttal, Ex. 103, Page 2, Lines 12-13.

¹⁰ Scruggs Rebuttal, Ex. 103, Page 2, Lines 13-16.

¹¹ Scruggs Rebuttal, Ex. 103, Page 2, Lines 22-23.

paid by the service providers for whom Allconnect provides a new customer.¹² As a result, Allconnect has a financial incentive to sell services to KCP&L and GMO customers. That also means that Allconnect sells only the services of the providers with which it has a business relationship.¹³ Not all providers enter into a business relationship with Allconnect, so customers who use Allconnect's services may not be aware of all their service options.¹⁴

9. Pursuant to their agreement, KCP&L and GMO transfer certain callers to Allconnect. Allconnect pays a fee to KCP&L and GMO for every call transferred.¹⁵

10. In general terms, when a residential customer of KCP&L or GMO calls their electric provider to turn on or transfer their electric service to a new residence, the KCP&L and GMO call center first obtains all the information it needs from the customer to turn on or transfer the customer's electric service. After the KCP&L and GMO customer service representative has obtained the needed information, he or she will determine whether the call is eligible for transfer to Allconnect.¹⁶

11. The KCP&L and GMO customer service representative tells customers that their call will be transferred to Allconnect, who is to verify the information provided by the customers before providing them with an order confirmation number. They are also told Allconnect will offer them additional home services, such as home phone, internet, cable/satellite, or home security. Their call is then transferred to Allconnect.¹⁷

¹² Transcript, Page 402, Lines 13-16. The citation is to a portion of the testimony given in camera and is therefore confidential. The Commission finds that this broad statement of how Allconnect is paid is important to an understanding of this complaint, and should be made public, as permitted by Section 386.480, RSMo 2000. See *also*, Kremer Direct, Ex. 1, Schedule LAK-d2, Page 12.

¹³ Caisley Rebuttal, Ex. 100, Page 10, Lines 5-19.

¹⁴ Kremer Direct, Ex. 1, Page 8, Lines 26-33.

¹⁵ The amount of the fee paid by Allconnect is highly confidential, but can be found at Klote Rebuttal, Ex. 102HC, Page 6, Lines 10-11.

¹⁶ Trueit Rebuttal, Ex 104, Page 4, Lines 6-18.

¹⁷ Trueit Rebuttal, Ex. 104, Pages 4-5, Lines 19-23, 1-9.

12. When transferring the customer's call to Allconnect, the KCP&L and GMO customer service representative also transfers certain customer-specific information directly to Allconnect. The customer information provided to Allconnect is the customer's name, service address, start-date of service, account number and confirmation number.¹⁸ The Allconnect representative is supposed to verify the accuracy of that information with the customer¹⁹ and then may use that information if the customer accepts Allconnect's offer of assistance in arranging other services.²⁰ Customers are not told that their customer information is being transferred to Allconnect.²¹

13. Although KCP&L and GMO share the customer-specific information with Allconnect, the companies retain that information in their own customer information system.²²

14. The Allconnect representatives are supposed to verify the customer information and give the customer a confirmation number before attempting to sell Allconnect's services to the customer.²³ In actual practice, the Allconnect representatives sometimes attempt to sell their services to the utilities' customers before giving them their confirmation number.²⁴ Staff's review of 86 customer calls transferred to Allconnect revealed that approximately 55 percent of those customers either received their confirmation number at the end of their conversation with Allconnect or never did receive a

¹⁸ A customer's phone number and e-mail address are not transferred to Allconnect. Transcript, Page 520-521, Lines 22-25,1.

¹⁹ Trueit Rebuttal, Ex. 104, Page 5, Lines 16-18.

²⁰ Transcript, Page 304, Lines 2-14.

²¹ Transcript, Pages 303-304, Lines 22-25, 1.

²² Trueit Rebuttal, Ex. 104, Page 5, Lines 19-22.

²³ Trueit Rebuttal, Ex. 104, Page 5, Lines 11-13.

²⁴ Transcript, Page 111, Lines 4-10. See also, Kremer Surrebuttal, Ex. 2, Schedule LAK-s3.

confirmation number from Allconnect.²⁵

15. The confirmation number is the tracking source of KCP&L and GMO's commitment to transfer or turn on electric service and provides a means for the customer to communicate with the utility if anything needs to be changed or something goes wrong on the day the service is to be connected.²⁶ KCP&L and GMO transfer the confirmation number to Allconnect along with the customer information, so the transfer of the customer call to Allconnect is not needed to get that number to the KCP&L or GMO customer.²⁷

16. While the accuracy of the information taken by the utilities regarding the turn-on or transfer of electric service is very important, the transfer of callers to Allconnect to verify that information is not necessary. KCP&L and GMO performed that verification function for themselves for many years before entering into a contract with Allconnect, and every other regulated utility in Missouri, to the best of Staff's knowledge, performs that verification function for itself.²⁸ In fact, KCP&L and GMO's own customer service representatives continue to perform that verification function today, Allconnect is just another verification layer.²⁹

17. The limited value of the verification performed by Allconnect is shown by the small number of corrections that resulted from that verification. From 80,741 calls transferred to Allconnect by KCP&L and GMO between January and October, 2015, Allconnect informed KCP&L and GMO of 10,217 "corrections" to its collected customer data. After reviewing those proposed "corrections", KCP&L and GMO actually made only

²⁵ Kremer Surrebuttal, Ex. 2, Page 13, Lines 8-18.

²⁶ Kremer Surrebuttal, Ex. 2, Page 4-5, Lines 20-22, 1.

²⁷ Transcript, Page 299, Lines 2-11.

²⁸ Kremer Surrebuttal, Ex. 2, Page 14, Lines 9-14.

²⁹ Transcript, Page 320, Lines 10-23.

279 corrections to its customer data.³⁰ KCP&L and GMO's witness, Jean Trueit, conceded that the number of mistakes identified by Allconnect is a small number that does not concern her.³¹

18. Trueit explained that the large number of identified corrections that do not need to be corrected occurs when Allconnect sends KCP&L and GMO a file of error corrections each day. Most of the corrections identified by Allconnect do not require correction. For example, Allconnect's system spells out the word apartment in an address, while KCP&L and GMO's system uses the abbreviation APT; that discrepancy would generate an error notice.³²

19. Allconnect uses two transfer models in its dealings with utilities. In the agent transfer model, the utility's customer service representative explains the services offered by Allconnect to the caller and explicitly asks permission before transferring the call to Allconnect.³³

20. KCP&L had a prior contractual relationship with Allconnect in the period of 2005 to 2007. Under that contract, the company's customer service representatives used an agent transfer model in transferring calls to Allconnect.³⁴ KCP&L terminated that contract because the transfer model was not working. It required KCP&L's customer service representative to spend too much time with customers trying to explain the services offered by Allconnect and resulted in too many customers refusing to be transferred to Allconnect.³⁵

³⁰ Kremer Surrebuttal, Ex. 2, Page 15, Lines 6-13, and Schedule LAK-s4.

³¹ Transcript, Page 319, Lines 15-24.

³² Transcript, Page 318, Lines 5-17.

³³ Transcript, Page 380, Lines 15-21.

³⁴ Transcript, Page 448, Lines 5-11.

³⁵ Transcript, Pages 449-450, Lines 6-25, 1-11.

21. The other transfer model is the confirmation model. Under that model, which is the model used by KCP&L and GMO, the utility customer service representative simply tells the customer that their call will be transferred to Allconnect with minimal explanation and no request for permission.³⁶

22. Specifically, the script used by KCP&L and GMO customer service representatives states:

Is there anything else I can help you with? Ok, Mr/Mrs _____
Now, I'm going to transfer you to Allconnect. They will confirm your order to ensure accuracy and can help you connect or transfer other services to your home. Thank you for calling KCP&L. Please hold while I transfer you now.³⁷

23. KCP&L and GMO witness Jean Trueit testified that from the above statement, customers are made aware that Allconnect will provide them with sales options. She further testified that “[i]f they do not wish to be transferred they are able to advise the CSR [customer service representative] of this. The Company CSR does not force the customer to be transferred to Allconnect”.³⁸ According to KCP&L and GMO, nine percent of customers refuse to be transferred to Allconnect.³⁹ Nevertheless, in some recorded calls to which Staff listened as part of its investigation, KCP&L or GMO customers were transferred to Allconnect despite their objections.⁴⁰

24. KCP&L and GMO’s witness, Charles Caisley, who is KCP&L’s Vice President for Marketing and Public Affairs,⁴¹ testified that the company is willing to consider changes to the script used by the customer service representatives to better inform customers about

³⁶ Transcript, Page 381, Lines 8-15.

³⁷ Exhibit 119, Attachment B.

³⁸ Trueit Rebuttal, Ex. 104, Page 7, Lines 13-17.

³⁹ Transcript, Page 322, Lines 2-4

⁴⁰ Transcript, Page 209, Lines 3-18.

⁴¹ Caisley Rebuttal, Ex. 100, Page 1, Lines 5-6.

Allconnect and to obtain their consent before their call is transferred.⁴²

25. KCP&L and GMO have conducted customer satisfaction surveys to determine whether their customers are satisfied with their experience with Allconnect. Those surveys showed that in 2014, approximately 43 percent of customers taking the survey reported that the fact that “your electric utility offered you the opportunity to purchase additional home services such as phone, internet, and cable all in one call” greatly or somewhat improved their “impression or perception of KCP&L”. On the other side, 18 percent of the customers taking the survey responded to that question by saying that their impression or perception of KCP&L had been greatly or somewhat decreased.⁴³

26. KCP&L and GMO have an adequate number of employees available to handle customer inquiries, service requests, safety concerns and complaints.⁴⁴

27. If a KCP&L or GMO customer makes a complaint related to their experience with Allconnect, the KCP&L/GMO customer service representatives are expected to collect the pertinent information and determine the nature of the complaint. If the complaint is about actions by KCP&L/GMO, the KCP&L/GMO customer service representative will resolve the complaint with the customer. If the KCP&L/GMO employee determines that the complaint is about Allconnect actions, he or she will notify Allconnect of the complaint. Allconnect will attempt to resolve the complaint with the customer. Allconnect then provides a summary of the complaint resolution to KCP&L/GMO.⁴⁵

28. KCP&L and GMO account for the revenues received from Allconnect, as well as the costs associated with its relationship with Allconnect, “below the line” in non-

⁴² Transcript, Page 452, Lines 5-21.

⁴³ Caisley Rebuttal, Ex. 100, Schedule CAC-1, Page 1.

⁴⁴ Trueit Rebuttal, Ex. 104, Page 7, Lines 3-7.

⁴⁵ Trueit Rebuttal, Ex. 104, Pages 6-7, Lines 14-22, 1-2.

regulated accounts. That means that those costs and revenues are not included when the rates paid by KCP&L and GMO customers for regulated electric service are determined.⁴⁶ In contrast, costs and revenues that are included when rates for regulated service are calculated are said to be “above the line”.

29. The amount of revenue KCP&L and GMO receive from Allconnect is highly confidential so it will not be included in this order.⁴⁷ KCP&L and GMO’s costs associated with the Allconnect relationship are significantly lower than the associated revenues,⁴⁸ so the relationship is a source of profit for the utilities, albeit a small source when compared to the companies’ total annual revenues of \$2.3 billion.⁴⁹

30. KCP&L and GMO indicated a willingness to change the Allconnect program, including a willingness to move the costs and revenues associated with that program “above the line,” if directed to do so by the Commission.⁵⁰

Conclusions of Law

A. KCP&L and GMO are electrical corporations as that term is defined at Section 386.020(15), RSMo (Supp. 2013). As electrical corporations, KCP&L and GMO are subject to regulation by this Commission as described in Chapters 386 and 393, RSMo.

B. The Commission’s Staff is authorized to file a complaint against KCP&L and GMO by Section 386.390, RSMo 2000, and by Commission Rule 4 CSR 240-2.070(1).

C. As the party asserting the affirmative of the issues, Staff, as the complainant,

⁴⁶ Klote Rebuttal, Ex. 102, Page 4, Lines 2-9.

⁴⁷ The total revenue numbers through September 2015 can be found at Klote Rebuttal, Ex. 102, Pages 8-9, Lines 21-22, 1-2.

⁴⁸ The total allocated costs are also highly confidential, but can be found at Klote Rebuttal, Ex. 102, Page 8, Lines 17-21.

⁴⁹ Transcript, Page 266, Lines 3-6.

⁵⁰ Transcript, Pages 455-456, Lines 22-25, 1-11. See *also*, Transcript, Page 495, Lines 2-10.

has the burden of proof.⁵¹

Application of Section 393.190.1, RSMo

D. Section 393.190.1, RSMo (Cumm. Supp. 2013), provides, in part, that:

[n]o ... electrical corporation, ... shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, ... without having first secured from the commission an order authorizing it so to do.

Staff and Public Counsel contend KCP&L and GMO have violated this statute by selling specific customer information to Allconnect without having sought or obtained permission from the Commission.

E. That statute restricts the utility's ability to dispose of or encumber any part of its "franchise, works or system." A utility franchise is "no more than local permission to use the public roads and rights of way in a manner not available to or exercised by the ordinary citizen."⁵² No one contends that the customer information that has been sold is a part of the utilities' "franchise", so the question narrows to whether it is part of their "works or system".

F. Missouri's statutes do not define either "works" or "system" in the context of service by an electric utility. However, the term "electric plant" is defined by Section 386.020(14), RSMo (Cumm. Supp. 2013) as including:

all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power[.]

⁵¹ See. *AG Processing, Inc. v. KCP&L Greater Missouri Operations Company*, 385 S.W. 3d 511 (Mo. App. 2012), *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W. 3d 680 (Mo. App. W.D. 2003).

⁵² *State ex rel Union Elec. Co. v. Pub. Serv. Com'n*, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989).

That definition includes tangible items of property used to provide electric service. It does not include intangible assets such as the customer information KCP&L and GMO have sold to Allconnect.

G. Although there is no statutory or case law stating that electric “plant”, “works”, and “system” are synonymous,⁵³ that is a reasonable conclusion consistent with the apparent purpose of the statute to restrict the sale or transfer of a utility’s works or system so as to protect the physical integrity and the financial viability of the works or system needed to serve the utility’s customers.

H. The idea that Missouri’s statutes treat “plant” and “system” as synonymous is supported by other definitions within section 386.020, RSMo. While that statute defines “electric plant” and “gas plant” for electric and gas service, it offers definitions of “sewer system”⁵⁴ and “water system for those types of service.”⁵⁵ Although the labels of “plant” and “system” are placed on the definitions for the different types of service, all the definitions refer to tangible, physical items of property used by a utility to serve customers.

I. In support of their position, Staff and Public Counsel point to a 1992 Commission decision that found the Commission had power under Section 393.190.1 to

⁵³ KCP&L and GMO’s initial brief cites *State on Inf. of McKittrick ex rel. City of Trenton v. Missouri Public Service Corp.*, 174 S.W.2d 871 (Mo. banc 1943) for the proposition that the term gas works is synonymous with gas plant. However, a close reading of the decision reveals that the court was interpreting the language of a municipal ordinance, not a state statute, and is using the terms “electric light plant” and “gas plant” as subsets of the broader term “works” in deciding that the Missouri Public Service Corporation had not forfeited a municipal franchise. The decision does not support KCP&L and GMO’s position.

⁵⁴ Section 386.020(50) RSMo (Cumm. Supp. 2013) ““Sewer system” includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose[.]”

⁵⁵ Section 386.020(60) RSMo (Cumm. Supp. 2013) ““Water system” includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

require Kansas City Power & Light Company to seek authority from the Commission before selling sulfur dioxide (SO₂) allowances created under the Clean Air Act Amendments of 1990.⁵⁶ In that decision, based on the facts established in that case, the 1992 Commission did indeed find that a utility's "system" describes something broader than its "works". The Commission concluded that "[a] utility's system is the whole of its operations which are used to meet its obligation to provide service to its customers."⁵⁷ In support of that statement, the 1992 Commission cited a 1934 Missouri Supreme Court decision, *State ex rel. City of St. Louis v. Pub. Serv. Comm'n.*⁵⁸

J. A review of that Supreme Court decision reveals that it concerned the sale of stock by one utility holding company to another layer of holding company. The 1930s Commission had approved that sale of stock, finding no detriment to the public. In its decision, the Supreme Court rejected the City of St. Louis' contention that public policy required the Commission to make an affirmative finding that the stock sale was in the public interest, not just a finding of no detriment. The Supreme Court's decision has nothing to do with the definition of a utility's system and whether such a system is limited to physical, tangible property. It does not support the statement for which it was cited. The 1992 Commission cited no other legal authority for its conclusion that a utility's "system" was something broader than its "works" and that intangible SO₂ allowances were part of that "system".

Application of Commission Rule 4 CSR 240-20.015(2)(C)

K. Commission Rule 4 CSR 240-20.015 generally applies to affiliate transactions

⁵⁶ *In the matter of the application of Kansas City Power & Light Company for review of its Phase I Compliance Plan and other activities under the Clean Air Act*, Order Establishing Jurisdiction and Clean Air Act Workshops, 1 Mo. P.S.C. 3d 359 (1992).

⁵⁷ *Kansas City Power & Light Company*, at 362.

⁵⁸ 73 S.W. 2d 393 (Mo. banc 1934).

by electric utilities. A provision of that rule defines an “affiliated entity” as one that is “... controlled by, or is under common control with the regulated electrical corporation.”⁵⁹ By terms of that definition, GPES is an affiliate of KCP&L and GMO; Allconnect is not.

L. The affiliate transaction rule defines an affiliate transaction as one “... between a regulated electrical corporation and an affiliated entity ...” including “...all transactions between any unregulated business operation of a regulated electrical corporation and the regulated business operations of a electrical corporation.”⁶⁰

M. Commission Rule 4 CSR 240-20.015(2)(C) provides “[s]pecific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. ...” Although this provision is included in the affiliate transaction rule, there is nothing in the rule that limits its restrictions on sharing customer information to affiliate transactions.

Application of Commission Rule 4 CSR 240-13.040(2)(A)

N. Chapter 13 of the Commission’s rules concerns the service and billing practices of Missouri’s regulated utilities. Commission Rule 4 CSR 240-13.040(2)(A) provides: “At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service request, safety concerns and complaints. ...”

Financial Penalties

O. Section 386.570, RSMo 2000 provides that public utilities that violate any provision of statute, rule, or order of the Commission are subject to a penalty of not less than one hundred dollars, nor more than two thousand dollars for each offense.

P. Section 386.600, RSMo 2000 authorizes the Commission to file an action in

⁵⁹ 4 CSR 240-20.015(1)(A).

⁶⁰ 4 CSR 240-20.015(1)(B).

any circuit court to recover such penalty.

Authority to Order Changes to Transfer Script and Accounting Practices

Q. Section 393.130.1, RSMo (Cumm. Supp. 2013) requires every electrical corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Further, Section 393.140(5), RSMo 2000 provides in relevant part:

[w]henever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that ... the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe ... the just and reasonable acts and regulations to be done and observed.

R. Section 393.140(4), RSMo 2000 give the Commission authority to “prescribe by order, forms of accounts, records and memoranda to be kept by such persons and corporations.”

Decision

Based on its findings of fact and conclusions of law, the Commission has made the following decision. In describing its decision, the Commission will respond to the list of issues set forth by the parties before the evidentiary hearing.

I. Does the evidence establish that, through the relationship with Allconnect, the Company has violated section 393.190.1 RSMo?

Section 393.190.1, RSMo requires regulated utilities to seek authority from the Commission before disposing of, or encumbering any part of its “franchise, works, or system, necessary or useful in the performance of its duties to the public”. KCP&L and GMO have not violated that statute.

The purpose of the statute is to ensure that a regulated utility does not impair its ability to provide service to the public by selling or encumbering (because of the possibility

the utility could lose control of the property if the incurred debt is not paid) the property it needs to serve the public. KCP&L and GMO's transfer of customer information does not fall within the strictures of the statute for two reasons.

First, the transfer of customer information to Allconnect that occurs under the contract is just a sharing of that information. KCP&L and GMO retain that information and can continue to use it to perform their duties to the public. The statute's concern to protect the integrity of the utility's means of serving the public is not affected by that transaction. Thus, the Commission determines there is no disposal or encumbering.

Second, customer information is not physical, tangible property that generally falls within the statutory definition of "plant", "works", and "system", the disposition of which is restricted by the statute. Staff and Public Counsel point to the Commission's 1992 *Kansas City Power & Light Company* decision that concluded, under the facts established in that case, that federal SO₂ allowances, were a part of the utility's "plant", "works" or "system", such as to bring them within the disposition restrictions of the statute. This Commission has concluded that part of the legal basis for the 1992 Commission's decision is questionable, but this Commission has not been asked to set aside that earlier decision and will not do so. In the future, the Commission may once again examine the circumstances presented in a particular case and conclude, as was done in 1992, that some item of intangible, non-physical property is a part of a utility's "plant", "works" or "system." But that conclusion is not appropriate in the circumstances described in Staff's complaint. The Commission finds and concludes that KCP&L and GMO have not violated section 393.190.1 RSMo.

II. Does the evidence establish that, through the relationship with Allconnect, the Company has violated 4 CSR 240-20.015(2)(C)?

Staff and Public Counsel assert that KCP&L and GMO have violated the

Commission's affiliate transaction rule by transferring customer information to Allconnect without having obtained the consent of those customers. Despite Staff and Public Counsel's claims to the contrary, KCP&L and GMO's transaction with Allconnect is not a transaction between affiliates. In that transaction, Allconnect pays money to KCP&L and GMO. In return, the utilities transfer certain customer calls and related customer information to Allconnect. GPES, which is an affiliate of KCP&L and GMO, signed the contract with Allconnect as a contracting vehicle on behalf of KCP&L and GMO, but GPES is not otherwise involved in the transaction. GPES' signature on the contract does not turn KCP&L and GMO's transaction with a wholly unaffiliated Allconnect into an affiliate transaction.

Nevertheless, KCP&L and GMO have violated 4 CSR 240-20.015(2)(C). That regulation requires that customer information be made available to "affiliated or unaffiliated entities" only with the consent of the customer, or as otherwise allowed by Commission rules or orders. The plain language of the rule says that it applies equally to the transfer of customer information to either affiliated or unaffiliated entities. The fact that the provision is found in a rule that otherwise regards affiliated transactions, does not change the clear language of the rule. That rule applies even though KCP&L and GMO's transaction with Allconnect is not an affiliate transaction.

KCP&L and GMO argue that the rule's restriction on the transfer of customer information should not apply to its transaction with Allconnect because in many other circumstances, utilities transfer customer information to other entities without having first obtained consent from the customers. For example, a utility may engage the services of another company to collect past-due accounts, read meters, or operate a customer call center on behalf of the utility. Customer information may routinely be transferred to those entities without the consent or knowledge of the utility's customer.

However, those situations differ from the transaction with Allconnect in that such contractual relationships are designed to effectuate some aspect of the utility's obligation to provide safe and adequate service to its customers. In contrast, the transfer of customer information to Allconnect does not serve any utility-service related purpose. The transaction is simply designed to deliver customer information to a third-party that wants to sell an unrelated service to the utility's customer.

KCP&L and GMO attempt to mask the true nature of the transaction by having Allconnect "confirm" the accuracy of the customer information already taken by KCP&L and GMO's customer service representatives. The evidence established that the KCP&L and GMO customer service representatives are capable of "confirming" the accuracy of the information they obtain from their customers. They did so for many years before KCP&L and GMO entered into their contract with Allconnect and are capable of doing so now. Rather, the confirmation function performed by Allconnect is a pretext to attempt to avoid regulatory problems of the type represented by Staff's complaint. Indeed, the confirmation function serves as a marketing hook to discourage utility customers from dropping off the line when their call is transferred to Allconnect.

The Commission finds and concludes that KCP&L and GMO have made customer-specific information available to Allconnect without the consent of their customers in violation of 4 CSR 240-20.015(2)(C).

III. Does the evidence establish that, through the relationship with Allconnect, the Company has violated 4 CSR 240-13.040(2)(A)?

Commission Rule 4 CSR 240-13.040(2)(A) requires a utility to have qualified personnel available to respond to customer inquiries and complaints. The evidence established that KCP&L and GMO have adequate numbers of trained customer service representative available to serve the needs of their customers. Staff and Public Counsel

did not question that KCP&L and GMO have such representative available. Rather they are concerned that some customer complaints about their treatment by Allconnect are transferred to Allconnect for resolution rather than being resolved by the KCP&L and GMO customer service representatives. The Commission shares Staff and Public Counsel's concerns. It is vital that KCP&L and GMO's customer service representatives respond and resolve any complaints related to the transfer of a utility customer to Allconnect. Such complaints must not be transferred to Allconnect. However, if the customer calls KCP&L or GMO to complain about the service they received from Allconnect after the call was transferred, it is appropriate for the utilities to pass that complaint along to Allconnect for resolution, so long as the utilities continue to monitor the complaint to ensure that their customers are treated fairly.

Despite those concerns, the Commission finds and concludes that KCP&L and GMO have qualified personnel available to respond to complaints and have not violated Commission Rule 4 CSR 240-13.040(2)(A).

IV. If the Commission finds in the affirmative on any of the preceding three issues, should the Commission direct its general counsel to seek monetary penalties against the Company?

The Commission has found and concluded that KCP&L and GMO have violated Commission Rule 4 CSR 240-20.015(2)(C) by transferring customer information to Allconnect without having obtained the consent of those customers. The question then becomes, does the Commission wish to exercise its discretion to direct its General Counsel to file an action in circuit court to seek financial penalties against KCP&L and GMO?

The Commission will not do so. While KCP&L and GMO have violated a Commission Rule by transferring customer information to Allconnect without the customers consent, that action does not convince the Commission that penalties are appropriate.

There is nothing inherently wrong with the service that Allconnect is offering to KCP&L and GMO's customers. It is a service that many customers seem to appreciate, based on the favorable reaction measured by the customer surveys reported by the utilities. But not all customers appreciate the offer, and if KCP&L and GMO wish to continue offering that service, they must obtain customer consent before transferring their calls and customer information to Allconnect.

In addition to the issues identified by the parties before the hearing, the following issues developed during the course of the hearing.

V. Should the Commission order KCP&L and GMO to end their relationship with Allconnect as a matter of good public policy even if that relationship does not violate any statute, rule, or Commission order?

This question was raised by the Commission as it heard the evidence and considered whether the relationship with Allconnect was in violation of any statute or Commission Rule. Having found and concluded that KCP&L and GMO have violated a Commission Rule, the question of whether the relationship should be ended even if it does not violate any rule has been effectively eliminated. Nevertheless, having found that KCP&L and GMO's current practices with regard to transferring customers to Allconnect are unjust and unreasonable, the Commission will prescribe the changes KCP&L and GMO must make to bring the Allconnect relationship into compliance with the Commission's rule, as it is authorized to do by Section 393.140(5), RSMo 2000.

If KCP&L and GMO wish to continue their contractual relationship with Allconnect by transferring customer calls and related information, they must ensure that customers understand that they have the option to transfer to Allconnect; that they can complete their business with KCP&L or GMO without having to transfer to Allconnect; and that Allconnect

is a third-party that offers services separate and apart from the services offered by the utility. KCP&L and GMO will need to modify the script used by their customer service representatives regarding the proposed transfer to Allconnect to obtain the informed customer consent.

In addition to changing the transfer script, KCP&L and GMO will also need to modify how they account for the revenues and expenses associated with the Allconnect relationship. That leads to the final issue.

VI. Should KCP&L and GMO be ordered to account for the Allconnect revenue and expenses “above the line”?

KCP&L and GMO currently account for revenues and expenses associated with the Allconnect relationship “below the line”; meaning they are treated as non-regulated revenue and expense that is not considered by the Commission when the companies’ rates are set. That also means the companies’ shareholders bear the risk of any associated loss and keep any resulting profit. The companies indicated at the hearing that they are willing to modify their accounting practices to bring the Allconnect revenue and expenses “above the line”, treating it as regulated revenue and expense, if the Commission directs them to do so.

The Commission finds and concludes that the revenue and expense associated with the Allconnect relationship should be treated as regulated revenue and expense and brought “above the line”. While the services Allconnect offers are not regulated by this Commission, KCP&L and GMO’s relationship with its customers is regulated. Further, the customer information and contacts that KCP&L and GMO are selling to Allconnect are developed through that regulated relationship. Finally, moving the revenue and expenses above the line reduces the impression that KCP&L and GMO are selling their customer’s information to increase their unregulated profits.

THE COMMISSION ORDERS THAT:

1. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company shall immediately cease violating Commission Rule 4 CSR 240-20.015(2)(C).
2. If Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company wish to continue their contractual relationship with Allconnect, Inc. they shall file for Commission approval a modified customer service representative script to ensure that customers give their informed consent before their calls and related information are transferred to Allconnect.
3. Effective with the date of this order, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company shall treat all revenues and expenses associated with its contractual relationship with Allconnect, Inc. "above the line" as regulated revenues and expenses.
4. This report and order shall become effective on May 27, 2016.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 27th day of April, 2016.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Laclede	)	
Gas Company to Change Its Infrastructure	)	File No. GO-2016-0196
System Replacement Surcharge in Its	)	
Laclede Gas Service Territory	)	

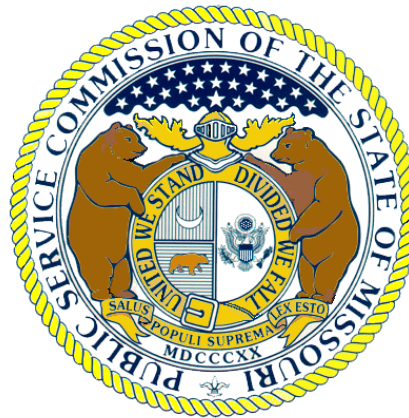
In the Matter of the Application of Laclede	)	
Gas Company to Change Its Infrastructure	)	File No. GO-2016-0197
System Replacement Surcharge in Its	)	
Missouri Gas Energy Service Territory	)	

RATES**§81. Surcharges**

The Commission could grant an application for an infrastructure replacement surcharge that did not include exact cost amounts when the applicant filed documentation supporting those amounts in time for the other parties to review them.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of May, 2016.



In the Matter of the Application of Laclede)
Gas Company to Change Its Infrastructure)
System Replacement Surcharge in Its)
Laclede Gas Service Territory.)

File No. GO-2016-0196

Tariff No. YG-2016-0193

In the Matter of the Application of Laclede)
Gas Company to Change Its Infrastructure)
System Replacement Surcharge in Its)
Missouri Gas Energy Service Territory.)

File No. GO-2016-0197

Tariff No. YG-2016-0194

REPORT AND ORDER

Issue Date: May 19, 2016

Effective Date: May 31, 2016

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede	)	
Gas Company to Change Its Infrastructure	)	<u>File No. GO-2016-0196</u>
System Replacement Surcharge in Its	)	Tariff No. YG-2016-0193
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System Replacement Surcharge in Its	)	Tariff No. YG-2016-0194
Missouri Gas Energy Service Territory.	)	

REPORT AND ORDER

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REGULATORY LAW JUDGE: Kim S. Burton

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede	)	
Gas Company to Change Its Infrastructure	)	<u>File No. GO-2016-0196</u>
System Replacement Surcharge in Its	)	Tariff No. YG-2016-0193
Laclede Gas Service Territory.	)	

In the Matter of the Application of Laclede	)	
Gas Company to Change Its Infrastructure	)	<u>File No. GO-2016-0197</u>
System Replacement Surcharge in Its	)	Tariff No. YG-2016-0194
Missouri Gas Energy Service Territory.	)	

REPORT AND ORDER

Issue Date: May 19, 2016

Effective Date: May 31, 2016

PROCEDURAL HISTORY

Laclede

Laclede Gas Company (“Laclede”) filed a verified application and petition, **docketed as File No. GO-2016-0196**, to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Laclede Gas Service Territory (“Laclede’s Petition”) on February 1, 2016.¹ With Laclede’s Petition, Laclede filed a tariff to modify the surcharge² with a proposed effective date of March 2, 2016.³ The Commission issued an order on February 3 directing notice be provided of Laclede’s Petition, setting an intervention deadline, suspending the tariff until May 31, and directing the Commission’s

¹ Exhibit 1; *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory and Request for Waiver of Commission Rule 4.020(2)*.

² Tariff No. YG-2016-0193.

³ All calendar references are to 2016, unless indicated otherwise.

Staff (“Staff”) to file a recommendation on Laclede’s Petition by April 1. No applications to intervene were received.

As part of Laclede’s Petition, the company requested a waiver of the Commission’s rule requiring notice be filed at least sixty days before an anticipated contested case.⁴ The Office of the Public Counsel (“OPC”) filed a response requesting the Commission deny the motion, arguing that since OPC is currently appealing the Commission’s prior order granting Laclede’s previous ISRS petition, Laclede should have known Laclede’s Petition would be a contested case. On March 2, the Commission issued an order granting Laclede’s request for waiver of the sixty-day notice requirement.⁵

On April 1, Staff filed a recommendation to approve Laclede’s Petition. On April 11, OPC filed a response opposing Staff’s recommendation and requesting an evidentiary hearing. The Commission issued an order on April 12 setting a joint evidentiary hearing on Laclede’s Petition and MGE’s Petition.⁶ A joint evidentiary hearing was held on April 26. The parties filed post-hearing briefs on May 4.

MGE

Missouri Gas Energy (“MGE”), an operating unit of Laclede Gas Company, filed a verified application and petition (“MGE’s Petition”), docketed as File No. GO-2016-0197, to change its ISRS on February 1.⁷ With its petition, MGE filed a tariff implementing the

⁴ 4 CSR 240-4.020(2).

⁵ File No. GO-2016-0196, EFIS Item No. 9.

⁶ Discussed *infra*.

⁷ Exhibit 2; *Verified Application and Petition of Missouri Gas Energy, an Operating Unit of Laclede Gas Company, to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and Request for Waiver of Commission Rule 4.020(2)*.

surcharge,⁸ effective on May 31. The Commission issued an order on February 3 directing notice be provided of MGE's Petition, setting an intervention deadline, suspending the tariff until May 31, and directing the Commission's Staff ("Staff") to file a recommendation on MGE's Petition by April 1. No applications to intervene were received.

As part of MGE's Petition, the company requested a waiver of the Commission's rule requiring notice be filed at least sixty days before an anticipated contested case.⁹ OPC requested the Commission deny MGE's motion. On March 2, the Commission issued an order granting MGE's request for waiver of the sixty-day notice requirement.

On April 1, Staff filed a recommendation to approve MGE's Petition. On April 11, OPC filed a response opposing Staff's recommendation and requesting an evidentiary hearing. The Commission issued an order on April 12 setting a joint evidentiary hearing on Laclede's Petition and MGE's Petition. A joint evidentiary hearing was held on April 26. The parties filed post-hearing briefs on May 4.

JOINT FINDINGS OF FACT

1. Laclede is a public utility and gas corporation incorporated under the laws of the State of Missouri. Laclede distributes and transports natural gas to customers in the City of St. Louis and the counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler.¹⁰

⁸ Tariff No. YG-2016-0194.

⁹ 4 CSR 240-4.020(2).

¹⁰ Exhibit 1; pg. 2, ¶ 3-4.

2. MGE is an operating unit of Laclede that conducts business in its MGE service territory under the fictitious name of Missouri Gas Energy. MGE is engaged in the business of distributing and transporting natural gas to approximately 500,000 customers in the western Missouri counties of: Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte, Ray, Saline, Stone, and Vernon.¹¹

3. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer's bill.¹² A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions.¹³

4. Once an ISRS is established, a gas corporation can submit to the Commission a proposed rate schedule changing the ISRS to recover the expense of Infrastructure System Replacements outside of a formal rate case.¹⁴ The cumulative revenue requirement for all Commission-approved ISRS updates is then placed on customers' bills before being zeroed out at the next general rate case.¹⁵

¹¹ Exhibit 2; pg. 2, ¶ 4-5.

¹² Exhibit 9; Mark Oligschlaeger Rebuttal Testimony, pg. 3, ln. 5-12.

¹³ Exhibit 9; Mark Oligschlaeger Rebuttal Testimony, pg. 3, ln. 13-15.

¹⁴ Exhibit 1; pg. 1, ¶1; Ex. 5, Appendix A, pg. 1.

¹⁵ Exhibit 5, Schedule BW-d2 pg. 3-4.

5. The Staff performs an ISRS audit when a gas corporation files a petition to change its ISRS.¹⁶ By statute, Staff has sixty days from the time an ISRS petition is filed in which to perform an audit, review the ISRS rate request and file a recommendation with the Commission.¹⁷

6. In contrast to the type of audit performed in a general rate case, an ISRS audit is limited in scope to a determination whether the included projects are ISRS-eligible and whether the calculations were done correctly. While costs of an ISRS project may be included in rates, those costs are still subject to a prudence review in a subsequent rate case. If the costs are found to be imprudent, the amount of ISRS funds collected for the project can be refunded to customers.¹⁸

7. Staff does not perform a review of the prudence of a project during an ISRS audit.¹⁹ A review of the prudence of a project approved for ISRS inclusion may occur at a later time, typically during a general rate case. Staff's standard practice for an ISRS review is not to go out into the field and verify ISRS additions.²⁰ A member of Staff may "red flag" a particular ISRS work order to be reviewed for prudence at some point. Typical red flags are for things like very high costs.²¹

8. When conducting an ISRS audit, Staff will sometimes use what may be described as a "true-up" procedure as part of its review of an ISRS petition.²² A true-up is an auditing procedure involving review of financial information not available at the

¹⁶ Exhibit 6, Schedule DMS-d2, pg.3 of David Sommerer's Direct Testimony.

¹⁷ Exhibit 9, Mark Oligschlaeger Rebuttal, pg. 4, ln. 1-4. Section 393.1015.2(2).

¹⁸ Exhibit 4, Glenn Buck Rebuttal Testimony, pg. 7, ln. 14- pg. 8, ln. 18.

¹⁹ Transcript, pg. 147, ln. 8-23; Ex. 4, Glenn Buck Rebuttal Testimony, pg. 7-8, ln. 14-16.

²⁰ Transcript, pg. 145, ln. 1-10.

²¹ Id. at pg. 148, ln. 7-21.

²² Id. at pg. 4, ln. 14-17.

time of the initial utility rate petition. With a true-up, updated information is submitted during the course of an audit and reviewed by the auditor.²³

9. Since at least 2009, Staff has conducted true-up reviews of Laclede's ISRS petitions.²⁴ Since late 2014 – after Laclede purchased MGE – Staff has also conducted true-up reviews of MGE's ISRS petitions.²⁵ Laclede and MGE (jointly, "Company") have worked with Staff to establish strict guidelines for the submission of updated information so that Staff has sufficient time to conduct an audit in a responsible and appropriate manner before the statutory deadline to file a recommendation with the Commission.²⁶

A. Laclede

10. Laclede's most recent general rate increase was approved by the Commission in File No. GR-2013-0171. The Commission approved Laclede's current ISRS to go into effect on April 12, 2014.²⁷ Since then, Laclede has routinely sought approval to revise its ISRS to include the costs of additional Infrastructure System Replacements. Since Laclede's last rate case, the Commission approved four petitions to change Laclede's ISRS, with the last order approving a change to the ISRS going into effect on December 1, 2015.²⁸ The cumulative Commission-approved ISRS amounts are included in Laclede's current ISRS rates.²⁹

²³ Id. at pg. 4, ln. 5-9.

²⁴ Id. At pg. 4, ln. 17-19.

²⁵ Transcript, pg. 64, ln. 5-9.

²⁶ Ex. 4, Glenn Buck Rebuttal Testimony, pg. 3, ln. 18-21.

²⁷ The Commission approved Laclede's ISRS in File No. GO-2014-0212.

²⁸ See Commission File No. GO-2015-0341.

²⁹ Exhibit 5, Appendix A, pg. 2.

11. Laclede filed a petition to change its ISRS on February 1, 2016.³⁰ This is the company's fifth ISRS petition since Laclede's last general rate case and seeks to recover costs for ISRS eligible projects from September 1, 2015 through February 29, 2016.³¹

12. With the filing of Laclede's Petition, the company attached supporting documentation for the plant additions completed in the months of September, October, November, and December 2015. This included supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.³² The company also provided estimates of capital expenditures for projects completed in January and February 2016.³³

13. Laclede provided Staff and OPC updated actual cost information for the January plant additions on February 9 and for the February plant additions on March 9.³⁴ Laclede updated the information for approximately seven work orders completed in January and sixteen in February. The total costs for the January and February work orders were approximately sixteen and a half million dollars, for an additional revenue requirement of \$1,472,634.³⁵

14. On February 12, Laclede provided Staff with a sample of work orders related to costs incurred between September 1, 2015 and December 31, 2015. Laclede provided a sample of work orders related to costs incurred between January 1 and

³⁰ Exhibit 1.

³¹ File No. GR-2013-0171. Ex. 5; Appendix A, pg. 2-3.

³² Exhibit 1, Appendix A and B.

³³ Exhibit 1.

³⁴ Ex. 4, Glenn Buck Rebuttal Testimony, pg. 5, ln. 14-23.

³⁵ Transcript, pg. 64-65, ln. 21-13.

February 29 on March 9. Staff performed an ISRS true-up audit of the information relating to plant additions made by Laclede during the months of January and February 2016.³⁶ Staff had adequate time to review the true-up information and communicate with Laclede's personnel before filing its recommendation on April 1.³⁷

15. As part of its audit, Staff received a sampling of work order authorizations for all projects of \$50,000 or more. This constituted approximately seventy-five percent of the total dollars in Laclede's Petition.³⁸ Staff had sufficient time to perform an effective ISRS audit, including a review of the information for January and February 2016 projects. Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.³⁹

16. After performing its audit, Staff filed a recommendation that the Commission approve Laclede's Petition for ISRS plant additions from September 1, 2015, through February 29, 2016. Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through April 15. By updating the accumulated depreciation and deferred taxes, the amount of Laclede's ISRS revenues requirement is decreased, thereby reducing the amount to be included in the ISRS surcharge.⁴⁰

17. Based on its review and calculations, Staff recommended Laclede receive ISRS revenue of \$5,389,900, with a cumulative amount to be included in rates of \$25,022,756. Staff also submitted a proposed rate schedule, which is consistent with

³⁶ Ex. 5, Schedule BW-d2, pg. 2-3.

³⁷ Ex. 5, Brian Wells Direct Testimony, pg. 2, ln. 19- pg. 3, ln. 3.

³⁸ Transcript, pg. 140, ln. 1-25.

³⁹ Ex. 5, Schedule BW-d2, pg. 2-3.

⁴⁰ Ex. 4, Glenn Buck Rebuttal Testimony, pg. 6, ln. 18-23.

the methodology used to establish Laclede's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.⁴¹

18. The January utility plant additions submitted for ISRS classification were in service and used and useful before Laclede's Petition was filed. The February plant additions were in service and used and useful at least a month before Staff filed its Recommendation on April 1.⁴²

19. OPC never objected to the inclusion of accumulated depreciation and deferred taxes after February 1, the date Laclede's Petition was filed.⁴³ OPC did not object to the plant additions included in Laclede's Petition for the months of September, October, November, or December 2015.⁴⁴

20. OPC did not perform an audit of the plant addition's Laclede submitted for ISRS approval that were completed in January and February 2016.⁴⁵

B. MGE

21. MGE's most recent general rate increase was approved by the Commission in File No. GR-2014-0007. MGE's current ISRS was established to go into effect on October 18, 2014.⁴⁶ Since then, MGE has routinely sought approval to revise its ISRS to include the costs of additional Infrastructure System Replacements. Since

⁴¹ Ex. 5, Schedule BW-d2, pg. 3-4.

⁴² Ex. 4, Glenn Buck Rebuttal Testimony, pg. 3, ln. 3-9.

⁴³ Exhibit 5, DMS-d1, Staff's Recommendation. Exhibit 4, Glenn Buck Redirect Testimony, pg. 2, ln. 14-21.

⁴⁴ File No. GO-2016-0196, Item No. 52, Brief of the Office of the Public Counsel.

⁴⁵ Transcript pg. 174, ln. 4-10.

⁴⁶ See File No. GR-2015-0270. Exhibit 2.

MGE's last rate case, the Commission has approved two petitions to change MGE's ISRS, with the last order going into effect on December 1, 2015.⁴⁷

22. MGE's Petition to change its ISRS and recover costs for eligible ISRS projects was filed on February 1, 2016.⁴⁸ In MGE's Petition, the company requested approval of \$3,597,838 in ISRS revenues for its ISR investments for the period September 1, 2015, through December 31, 2015, and estimated ISRS costs updated through February 29, 2016.⁴⁹

23. With the filing of MGE's Petition, the company attached supporting documentation for the plant additions completed in the months of September, October, November, and December 2015. This included supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense. In its supporting documentation, MGE used estimates of capital expenditures for projects completed in January and February 2016.⁵⁰

24. On February 2, a day after MGE's Petition was filed, the company provided Staff with a sample of work orders related to infrastructure replacement costs MGE incurred between September 1, 2015, and December 31, 2015.⁵¹ Updated actual cost information and a sample of work orders for January 2016 infrastructure replacements were provided to Staff and OPC on February 9, and updated actual cost information for February 2016 plant additions and a sample of the work orders were

⁴⁷ File No. GO-2015-0343. Exhibit 2, ¶ 2-3. Exhibit 6, Schedule DMS-d2, pg. 3.

⁴⁸ Exhibit 2.

⁴⁹ Exhibit 2 and Exhibit 6, Schedule DMS-d2, pg. 1-2.

⁵⁰ Exhibit 2, Appendices A,B,C and D.

⁵¹ Exhibit 2 and Exhibit 6, Schedule DMS-d2, pg. 2-3.

provided to Staff and OPC on March 9.⁵² Also on March 9, MGE updated the amount of revenue requirement it was seeking to \$3,570,050.⁵³ The total cost for the January and February projects was approximately \$12.004 million, with a revenue requirement of \$1,237,278.⁵⁴ MGE updated the information for approximately thirty-two work orders in January and thirty for February.⁵⁵

25. As part of its ISRS audit, Staff reviewed supporting workpapers, a representative sample of work orders, and other applicable documentation and communicated with MGE's personnel to clarify MGE's petition, when necessary.⁵⁶ Staff received a sampling of work order authorizations for all projects of \$50,000 or more. This constituted approximately seventy-five percent of the total dollars in MGE's Petition.⁵⁷

26. Staff had an adequate opportunity to perform an effective ISRS audit, including a review of the information for the January and February 2016 projects included for pro-forma approval in MGE's Petition.⁵⁸ Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.⁵⁹

27. After performing its audit, Staff filed a recommendation that the Commission approve MGE's Petition for ISRS plant additions from September 1, 2015, through February 29, 2016. Staff recommended the Commission approve the inclusion

⁵² Exhibit 6, Schedule DMS-d2, pg 3 of David Sommerer's Direct Testimony. Ex. 4, Glenn Buck Rebuttal Testimony, pg. 5, ln. 14-23.

⁵³ ⁵³ Exhibit 6, Schedule DMS-d2, pg. 2.

⁵⁴ Transcript, pg. 64, ln 21 to pg. 65, ln 13.

⁵⁵ Transcript, pg. 64, ln 21 to pg. 65, ln 13.

⁵⁶ Exhibit 6, Schedule DMS-d2, pg. 3 of David Sommerer's Direct Testimony.

⁵⁷ Transcript, pg. 140, ln. 1-25.

⁵⁸ Exhibit 7; Jennifer Grisham Direct Testimony, pg. 2, ln. 19-23.

⁵⁹ Exhibit 6, Schedule DMS-d2, pg 3 of David S Sommerer's Direct Testimony. Ex. 4, Glenn Buck Rebuttal Testimony, pg. 5, ln. 14-23.

of accumulated depreciation and deferred taxes through April 15. By updating the accumulated depreciation and deferred taxes, the amount of the company's ISRS revenue requirement is decreased, thereby reducing the amount to be included in the ISRS surcharge.⁶⁰

28. Based on its review and calculations, Staff recommended MGE receive ISRS revenues of \$3,570,050, with a cumulative amount to be included in rates of \$10,253,423. Staff also submitted a proposed rate schedule, which is consistent with the methodology used to establish MGE's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.⁶¹

29. The January utility plant additions included for ISRS classification were in service and used and useful before MGE's Petition was filed. The February plant additions were in service and used and useful at least a month before Staff filed its Recommendation on April 1.⁶²

30. OPC never objected to the inclusion of accumulated depreciation and deferred taxes after February 1, the date MGE's Petition was filed.⁶³ OPC did not object to the plant additions included in MGE's Petition for the months of September, October, November, or December 2015.⁶⁴

31. OPC did not perform an audit of the plant additions MGE submitted for ISRS approval that were completed in January and February 2016.⁶⁵

⁶⁰ Id. Exhibit 4, Glenn Buck Rebuttal Testimony, pg. 6, ln. 18-23.

⁶¹ Exhibit 6, Schedule DMS-d2, pg. 3-4.

⁶² Ex. 4, Glenn Buck Rebuttal Testimony, pg. 3, ln. 3-9.

⁶³ Exhibit 5, DMS-d1, Staff's Recommendation. Exhibit 4, Glenn Buck Redirect Testimony, pg. 2, ln. 14-21.

⁶⁴ File No. GO-2016-0196, Item No. 52, Brief of the Office of the Public Counsel.

⁶⁵ Transcript pg. 174, ln. 4-10.

CONCLUSIONS OF LAW

Laclede and MGE are both considered a “gas corporation” and “public utility”, as those terms are defined in section 382.020 RSMo.⁶⁶ Therefore, both Laclede and MGE are subject to the jurisdiction of the Commission as provided in Chapters 386 and 393, RSMo. The Commission’s authority is limited to that specifically granted by statute or warranted by clear implication as necessary to effectively render a specifically granted power.⁶⁷ Sections 393.1009 through 393.1015 RSMo (“ISRS Statutes”) authorize a gas corporation to establish or change an ISRS rate schedule outside of a general rate case after approval by the Commission. An ISRS is a statutorily permitted form of rate adjustment mechanism that allows a public utility to change rates based on the consideration of a single issue.⁶⁸

No party disputes that the projects submitted for Commission approval in Laclede’s and MGE’s Petitions for the months of September, October, November, and December 2015 are eligible infrastructure system replacements under the ISRS Statutes.⁶⁹ However, OPC objects to the approval of January and February 2016 projects because only budgeted estimates of expenses were provided for those projects with the filing of the petitions on February 1, rather than actual costs. OPC argues that at the time a gas corporation files its petition to change an ISRS, it must provide all supporting documentation with records of actual expenses – not estimates – for all cost to be included in the surcharge.⁷⁰ OPC also asserts that the ISRS statutes requiring

⁶⁶ Statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.

⁶⁷ *State ex rel. Int’l Telecharge, Inc. v. Mo. Pub. Serv. Comm’n*, 806 S.W.2d 680, 686 (Mo. App. W.D. 1991).

⁶⁸ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁶⁹ See File No. GO-2016-0196 EFIS Item No. 52; Brief of the Office of the Public Counsel.

⁷⁰ Transcript, pg. 34-35, ln. 17-17.

“supporting documentation” is further narrowed by the Commission’s rule regarding what supporting documentation must be submitted at the time of filing.

The Commission must therefore determine if the use of estimates that are later updated is consistent with the ISRS Statutes and the applicable Commission rules. The Commission determined in December 2015 that it was and sees no reason to change that determination.

Section 393.1015.1(1) states:

At the time that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its **supporting documentation regarding the calculation of the proposed ISRS** with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation (emphasis added).

The legislative intent behind the ISRS Statutes was to allow for more timely cost recovery for gas safety improvements. “The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language.”⁷¹ As used in the ISRS Statutes, the word “supporting” means “to serve as verification, corroboration, or substantiation of.”⁷² Based on that definition, cost estimates can be seen as “supporting documentation” for the calculated proposed ISRS submitted with the petitions. The estimates for expenditures in January and February 2016 were used to corroborate the calculations used by the Company for its proposed ISRS rate schedules. The general rule is that where more accurate information is

⁷¹ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015). Every word, sentence or clause is presumed to have an effect and not be superfluous language.

⁷² WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2297 (1986).

unavailable, estimates should be considered. *State ex rel. Martigney Creek Sewer Co. v. Public Service Commission*, 537 S.W.2d 388, 396 (Mo. banc 1976).

In addition, nothing in the ISRS Statutes specifically prohibits the updating process, which is allowed in other types of cases before the Commission, such as purchased gas adjustments. The estimates submitted by the Company were replaced with actual cost expenditures when that data became available. Section 393.1015.2(2), RSMo, allows Staff to examine the company's information to confirm ISRS eligibility. However, it does not limit that examination to information provided with an ISRS petition. Staff is allowed to review additional information and question the Company after the petitions are filed. That occurred during Staff's audit in this case.

The Commission's rules identify with more particularity the type of supporting documentation a gas corporation must file with its ISRS petition.⁷³ OPC argues that to the extent that documentation may not have been provided at the time the Company filed the petitions, the lack of documentation is fatal to the ISRS petitions for those January and February 2016 projects. To interpret Commission Rule 4 CSR 240-

⁷³ 4 CSR 240-3.265(20) states:

At the time that a natural gas utility files a petition with the commission seeking to establish, change or reconcile an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition.... The subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information:

...

(K) For each project for which recovery is sought, the net original cost of the infrastructure system replacements...the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacement for each:

...

(L) For each project for which recovery is sought, the statute, commission order, rule or regulation, if any, requiring the project; a description of the project, the location of the project; what portions of the project are completed; used and useful, what portions of the project are still to be completed; and the beginning and planned end date of the project.

3.265(20) as strictly and narrowly as OPC suggests would significantly expand on the statutory requirements placed on Company.⁷⁴ The Commission's duty is to determine whether the ISRS petitions comply with the ISRS Statutes.⁷⁵ It is inconsistent with the ISRS Statutes to state that a gas corporation may not attach to its petition estimates as supporting documentation or that failing to provide a document identified in the Commission's rule when filing the petition is reason alone to deny the petition.⁷⁶ The Commission's rule specifies the supporting documentation to be provided with the petition to ensure Staff is not hindered from performing an adequate review within the sixty days allowed by statute. The use of a true-up procedure where estimates are initially provided does not by itself prevent that review.

That is not to say that there are no limits to the use of the estimate submittal-updating process. As the Commission determined in its Report and Order in File Nos. GO-2015-0341 and GO-2015-0343, so long as Staff has sufficient time to perform an effective review of ISRS eligibility within the sixty days allowed under Section 393.1015.2(2), RSMo, the inclusion of estimates for January and February, along with the actual expense records provided after the filing of the petitions, are acceptable.⁷⁷

Staff had twenty-three days to perform an ISRS audit of the updated information for the February 2016 plant additions, and even more time for the January projects. Staff worked with the Company to get a sampling of the work order authorizations for all

⁷⁴ *Union Elect. Co. v. Dir. Of Revenue*, 425 S.W.3d 119 at 125 (Mo. 2014). A court will not apply a regulation in a manner that is inconsistent with the governing statute.

⁷⁵ Section 393.1015.2(4) and 4 CSR 240-3.265(13). If the Commission finds that a petition complies with the requirements of the ISRS Statute, the Commission shall enter an order authorizing the corporation to impose an ISRS.

⁷⁶ *Id.* at 125 (Mo. 2014) (internal citations omitted). "If a regulation is inconsistent with the statute, it is the statute, not the regulation, that this Court will apply."

⁷⁷ Commission File Nos. GO-2015-0341 and GO-2015-0343, Report and Order, p. 18 (filed November 12, 2015).

projects of \$50,000 or more. This constituted approximately seventy-five percent of the total dollar amounts for both companies. When discussing the statutorily required Staff review, the Missouri Supreme Court stated, “The examination may scrutinize the petitioning gas corporation’s information to confirm the costs are in accordance with the ISRS code provisions and confirm the proposed charges are calculated properly.”⁷⁸ The process Staff has in place is consistent with the purpose of the ISRS Statutes – to incentivize capital investments in safety upgrades while allowing for a limited review. OPC’s position – that a more intensive and thorough audit is mandated – is inconsistent with the intent of the ISRS Statutes and the time constraints contained therein.

Staff’s witnesses testified that they had sufficient time to perform an effective audit of Company’s petitions. After performing those audits, Staff determined that all projects submitted by Laclede and MGE were eligible under the ISRS Statute. OPC did not attempt to conduct an audit of either Laclede or MGE’s Petition. No evidence was presented that any project included in either Laclede’s Petition or MGE’s Petition was not ISRS eligible.

To be eligible for inclusion in an ISRS, a gas utility plant project must not: increase revenues by directly connecting to new customers; be included in rate base in the last general rate case; replace or extend the useful life of an existing infrastructure. In addition, the plant project must be used and useful.⁷⁹ No evidence was presented that any of the projects were not gas utility plant projects⁸⁰ considered eligible infrastructure system replacements, as those terms are defined in the ISRS Statutes.

⁷⁸ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁷⁹ Section 393.1009(3).

⁸⁰ Section 393.1009(5).

The Company provided supporting documentation showing the plant additions from September 2015 through February 2016 were ISRS eligible.

Decision

A. Laclede

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying law to the facts in reaching its conclusion, the Commission finds that based on competent and substantial evidence, Laclede met its burden of proof in establishing that the projects submitted for approval in Laclede's Petition for the period beginning September 1, 2015 through February 29, 2016, are ISRS eligible. Laclede submitted the supporting documentation required by Section 393.1015.1(1) RSMo and Commission Rule 4 CSR 240-3.265(20).

Since no party opposed the inclusion of updated reserves for depreciation and accumulated deferred income taxes related to actual ISRS investments, Laclede's ISRS rates will recognize both through April 15, 2016.

Staff proposed a rate design for each customer class to allow Laclede to generate the surcharge amount approved by the Commission. No objections were made to Staff's rate design method. The Commission will direct Laclede to utilize Staff's rate design method. The Commission will reject the tariff filed by Laclede on February 1 and direct the company to submit a tariff that is consistent with this order.

B. MGE

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying law to the facts in reaching its conclusion, the Commission finds that based on competent and substantial evidence, MGE met its burden of proof in establishing that the projects submitted for approval in MGE's Petition for the period beginning September 1, 2015 through February 29, 2016, are ISRS eligible. MGE submitted the supporting documentation required by Section 393.1015.1(1) RSMo and Commission Rule 4 CSR 240-3.265(20). Since no party opposed the inclusion of updated reserves for depreciation and accumulated deferred income taxes related to actual ISRS investments, MGE's ISRS rates will recognize both through April 15, 2016.

Staff proposed a rate design for each customer class to allow MGE to generate the surcharge amount approved by the Commission. No objections were made to Staff's rate design method. The Commission will direct MGE to utilize Staff's rate design method. The Commission will reject the tariff filed by MGE on February 1, and direct the company to submit a tariff that is consistent with this order.

THE COMMISSION ORDERS THAT:

1. The tariff sheet filed by Laclede Gas Company on February 1, 2016, and assigned Tariff No. YG-2016-0193 is rejected.
2. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge in an amount sufficient to recover ISRS revenue of \$5,389,900 for File No. GO-2016-0196.

3. Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design.

4. Laclede Gas Company shall file a tariff sheet in compliance with this order no later than May 20, 2016.

5. Staff shall review the tariff sheet required by Ordered Paragraph 4 above after it is filed by Laclede Gas Company and file a recommendation as to whether the tariff sheet is in compliance with this order no later than May 23, 2016.

6. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 4 above shall file its response no later than May 23, 2016.

7. The tariff sheet filed by Missouri Gas Energy, an Operating Unit of Laclede Gas Company on February 1, 2016, and assigned Tariff No. YG-2016-0194 is rejected.

8. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge sufficient to recover revenues of \$3,570,050 for File No. GO-2016-0197.

9. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method.

10. Missouri Gas Energy, an Operating Unit of Laclede Gas Company shall file a tariff sheet in compliance with this order no later than May 20, 2016.

11. Staff shall review the tariff sheet required by Ordered Paragraph 10 above once it is filed and file a recommendation as to whether the tariff sheet is in compliance with this order no later than May 23, 2016.

12. Any party wishing to respond or comment on the tariff sheet required by Ordered Paragraph 10 above shall file its response no later than May 23, 2016.

13. This order shall go into effect on May 31, 2016.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Burton, Senior Regulatory Law Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Missouri-American)
 Water Company's Request for Authority to)
 Implement A General Rate Increase for)
 Water and Sewer Service Provided in its)
 Missouri Service Area.)

File No. WR-2015-0301

EVIDENCE, PRACTICE AND PROCEDURE

§28. Arbitration

The Commission has no authority to compel a public utility into arbitration.

RATES

§15. Classification of customers

The Commission ordered the filing of tariffs that established a low-income class of customers eligible for a discounted rate.

§45. Uniformity

Pricing among districts need not be uniform, and need not be district-specific; consolidation of some districts and not others for rate-setting does not offend the statutory ban against undue discrimination.

§89. Straight, block or step-generally

In setting a volumetric charge, the Commission encouraged conservation by rejecting declining block rates, and imposed a one-block volumetric rate in all districts for all classes.

SEWER

§12. Maintenance

The Commission rejected a proposal for a specific valve maintenance program because the proponent did not show that the current practice was less than safe and adequate.

§19. Discrimination

Pricing among districts need not be uniform, and need not be district-specific; consolidation of some districts and not others for rate-setting does not offend the statutory ban against undue discrimination.

WATER

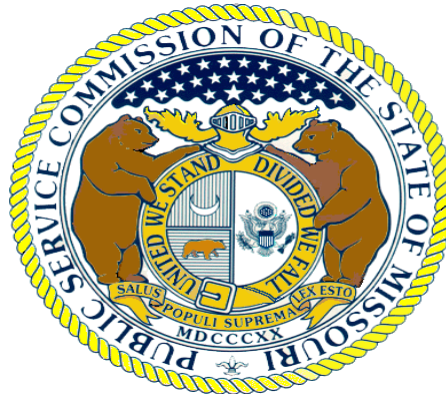
§14. Maintenance

The Commission rejected a proposal for a specific valve maintenance program because the proponent did not show that the current practice was less than safe and adequate.

§21. Discrimination

Pricing among districts need not be uniform, and need not be district-specific; consolidation of some districts and not others for rate-setting does not offend the statutory ban against undue discrimination.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Missouri-American Water Company's)
Request for Authority to Implement a General Rate Increase)
for Water and Sewer Service Provided in Missouri Service)
Areas)

File No. WR-2015-0301

REPORT AND ORDER

Issue Date: May 26, 2016

Effective Date: June 25, 2016

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water Company's	)	
Request for Authority to Implement a General Rate	)	
Increase for Water and Sewer Service Provided in	)	
Missouri Service Areas	)	<u>File No. WR-2015-0301</u>

REPORT AND ORDER

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Chief Regulatory Law Judge: **Morris L. Woodruff**

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Procedural History

On July 31, 2015, Missouri-American Water Company (Missouri-American or Company) submitted revised tariff sheets to implement a general rate increase for water and sewer service throughout its service territory to increase its annual revenues by \$51 million. The proposed tariff sheets bore an effective date of August 30, 2015. In order to allow time to study the tariff sheets and to determine if the rates resulting therefrom are just, reasonable and in the public interest, the Commission suspended the proposed tariff sheets until June 28, 2016.

In its order suspending the tariff sheets, the Commission directed that notice of the filing be given and invited applications to intervene. The following entities requested intervention: the Missouri Industrial Energy Consumers (MIEC); the Missouri Department Economic Development – Division of Energy; Triumph Foods, LLC; the City of Warrensburg, Missouri; the City of St. Joseph, Missouri, the City of Joplin, Missouri; Public Water Supply District Nos. 1 and 2 of Andrew County, Missouri; the City of Riverside, Missouri; the City of Brunswick, Missouri; Stonebridge Village Property Owners Association; and Utility Workers Union of America Local 335, AFL-CIO. The Commission granted all requests to intervene.

In January 2016, the Commission held local public hearings across the state. Those hearings were held in Jefferson City, Branson, Joplin, Warsaw, Warrensburg, Riverside, St. Joseph, Brunswick, Mexico, Arnold, and St. Louis County.

An evidentiary hearing was scheduled to begin on March 14, 2016. Before the start of the hearing, the parties requested and were granted time to formalize an agreement. As a result, the first week of the hearing was cancelled. On March 16, several parties filed a

non-unanimous stipulation and agreement that indicated the parties' agreement to increase Missouri-American's annual revenues by \$30.6 million.¹ No one objected to that stipulation and agreement, and the Commission approved it and a second stipulation and agreement in an order issued on April 6.

The approved stipulations and agreements did not resolve all the issues. An evidentiary hearing was held regarding the remaining issues on March 21, 22 and 23. The parties filed initial post-hearing briefs on April 8, with reply briefs following on April 22.

The Issues

District Consolidation/Consolidated Pricing

Background:

This issue concerns the means of allocating Missouri-American's revenue requirement to its various groups of customers. The amount of the increase in the company's revenue requirement that will result from this case has already been determined through the approved stipulation and agreement of the parties.

Findings of Fact:

Water District Consolidation

1. Missouri-American currently provides water service to 19 distinct water systems in Missouri. Those water systems vary in size from the St. Louis Metro system, which counts 366,815 customers, to the Redfield system, which counts 23 customers. In all, Missouri-American serves 459,429 water customers. Of those 19 water systems, only

¹ Missouri-American's annual revenue increase was subsequently reduced to \$30.413 million by agreement of the parties as ordered by the Commission on May 11, 2016.

four – St. Louis Metro, St. Joseph, Joplin, and Jefferson City – serve more than 8,000 customers.²

2. Missouri-American also provides wastewater (sewer) service to 11,790 Missouri customers through 13 sewer systems. Those 13 sewer systems range in size from Arnold with 6,877 customers, to Ozark Meadows with 26 customers.³

3. The described water and sewer systems are themselves consolidations of still smaller water and sewer systems. For example, the Maplewood/Riverside/Stonebridge water system with 1,385 customers is comprised of separate systems located in Pettis, Stone, and Taney Counties.⁴ Furthermore, the St. Louis Metro system includes systems in St. Louis County, Warren County, and St. Charles County.⁵

4. Missouri-American's costs of providing service must be allocated to these various water and sewer systems for purposes of developing the rates that the customers served by those systems must pay.⁶

5. Some costs can be directly assigned to a particular system, such as the cost of a treatment facility or the mains and pipes that serve that system. Other costs, such as a customer call center, billing services, or other corporate services are allocated to the various water and sewer systems in a less definite manner, based on allocation factors determined by whomever is examining the company's books and records, in this case by the company and by Staff's auditors.⁷ As a result, the company's cost to serve a particular

² Cassidy Surrebuttal, Ex. Staff-16, Page 2, Lines 16-37.

³ Cassidy Surrebuttal, Ex. Staff-16, Page 3, Lines 1-16.

⁴ Marke Direct, Ex. OPC-9, Page 9, Lines 1-8.

⁵ Busch Direct, Ex. Staff-9, Page 9, Lines 9-10.

⁶ Busch Direct, Ex. Staff-9, Page 4, Lines 2-4.

⁷ Busch Direct, Ex. Staff-9, Page 4, Lines 8-12.

system is not a definite or unquestionable number.

6. The allocation of costs and resulting rates to the water and sewer systems can be accomplished using two methods. The first is district-specific pricing wherein the auditor attempts to collect all the costs of providing service to each individual district and develops rates based on that district's cost of service. Thus, in theory, the ratepayers in any district pay rates designed to recover the cost of providing service to that district.⁸ Under district-specific pricing residential customers in St. Joseph, Brunswick, and Joplin would all pay their own, distinct rate.

7. The second method is single-tariff pricing. In single-tariff pricing all costs of the utility are combined and rates are developed on a system-wide basis. Thus, all customers in a given rate class, for example, residential customers, will pay the same customer charge and commodity rate for the water they consume, no matter where within the company's service territory they live.⁹ So, for example, residential customers in St. Joseph will pay the same rates as residential customers in Brunswick and in Joplin.

8. District-specific pricing and single-tariff pricing are the two extremes on the spectrum of possible methods of allocating costs and designing rates. Allocating costs and designing rates can also be done by consolidating the system into larger districts for purposes of allocating costs and determining rates. Under this consolidated pricing method, residential customers in St. Joseph and Brunswick might pay one rate, while a residential customer in Joplin might pay a different rate.¹⁰

9. In a 2000 rate case, the Commission decided that Missouri-American should

⁸ Busch Direct, Ex. Staff-9, Page 4, Lines 16-22.

⁹ Busch Direct, Ex. Staff-9, Page 5, Lines 15-21.

move away from its then existing single-tariff pricing toward district-specific pricing.¹¹ As a practical matter, Missouri-American has never actually reached pure district-specific pricing. Currently, Missouri-American's rates are calculated using eight water districts established by stipulation and agreement of the parties in the company's last rate case. The seven largest districts – St. Louis Metro, Mexico, Jefferson City, Warrensburg, Joplin, Platte County, and St. Joseph - have rates designed based on their estimated cost of service. The eighth district is a consolidation of the remaining service territories, broken into additional sub-districts.¹²

10. In this case, Missouri-American initially proposed to consolidate the existing water districts into 3 new districts based on their current level of rates:¹³

Zone 1	Zone 2	Zone 3
St. Louis Metro	Mexico	Brunswick
Joplin	Platte County	Spring Valley - Lake Manor
St. Joseph	Jefferson City	Ozark Mountain-LTA
Warrensburg		Rankin Acres-Whitebranch
Maplewood/Riverside/Stonebridge – Saddlebrooke - Emerald Pointe Water		
Tri-States		

11. Staff also proposed consolidation into three new water districts:¹⁴

District 1	District 2	District 3
St. Louis Metro (St. Louis County, Warren County, and	St. Joseph	Joplin

¹⁰ Busch Direct, Ex. Staff-9, Page 6, Lines 5-7.

¹¹ *In the Matter of Missouri-American Water Company's Tariff Sheets Designed to Implement General Rate Increases*, File No. WR-2000-281 Report and Order, 9 Mo. P.S.C. 3d 254, 291 (2000).

¹² Busch Direct, Ex. Staff-9, Page 6, Lines 8-18.

¹³ Herbert Rebuttal, Ex. MAWC-9, Pages 2-3, Lines 26, 1-3, and Schedule PRH-6.

¹⁴ Busch Direct, Ex. Staff-9, Page 9, Lines 7-14.

St. Charles		
Mexico	Platte County	Stonebridge
Jefferson City	Brunswick	Warrensburg
Anna Meadows		Whitebranch
Redfield		Lake Taneycomo
Lake Carmel		Lakewood Manor
		Rankin Acres
		Spring Valley
		Tri-States
		Emerald Pointe
		Maplewood
		Riverside Estates

12. Staff's proposed consolidation is based on geographical location and operating characteristics. District 1 includes existing water districts in east-central Missouri, District 2 contains districts located in the northwest portion of the state, and District 3 contains the districts in the southwest part of the state.¹⁵ Each of Staff's proposed Districts includes at least one larger district as an anchor for the District. That allows costs within each District to be spread to a larger customer base.¹⁶ Further, the water systems in the various districts share many of the same labor and management personnel and operating characteristics, and thus share similar corporate costs. The systems within the proposed Districts also share similar sources for their water.¹⁷ Finally, labor costs will tend to be similar in each of the three Districts proposed by Staff.¹⁸

13. Missouri-American does not oppose Staff's plan for water district consolidation.¹⁹

14. On March 22, 2016, during the course of the evidentiary hearing, Public

¹⁵ Busch Rebuttal, Ex. Staff-11, Pages 3-4, Lines 20-23, 1-3.

¹⁶ Busch Rebuttal, Ex. Staff-11, Pages 4-5, Lines 22-23, 1-3.

¹⁷ Busch Direct, Ex. Staff-9, Page 10, Lines 1-19.

¹⁸ Busch Surrebuttal, Ex. Staff-12, Pages 9-10, Lines 20-23, 1-3.

Counsel, MIEC, Brunswick, St. Joseph, and Joplin filed a non-unanimous stipulation and agreement regarding rate design, district consolidation and sewer revenue. Staff objected to the stipulation and agreement, so, by Commission rule, the stipulation and agreement became merely a joint position of the parties to which they are not bound.²⁰ Nevertheless, the signatory parties continue to support that joint position.

15. The joint position proposes to maintain the current 8 water districts with slight modifications. The current 8 water districts are as follows:²¹

Joplin
Jefferson City
Mexico
Platte County
St. Joseph
St. Louis Metro
Warrensburg
District 8 (This district includes all the other smaller water systems served by Missouri-American. Brunswick is currently in District 8

16. The joint position would consolidate Anna Meadows and Hickory Hills, which are recently acquired systems, into the St. Louis Metro district for water only. It would consolidate Brunswick into the St. Joseph district. Redfield, another recently acquired system, would be consolidated into the Jefferson City district. Finally the remaining

¹⁹ Herbert Rebuttal, Ex. MAWC-9, Page 3, Lines 11-15.

²⁰ Commission Rule 4 CSR 240-2.115(2)(D).

districts currently in District 8 would become a new consolidated Branson district. All other water systems would remain in their current districts. In addition, the Platte County district would receive a five percent reduction in its residential rates, with ten percent of the reduction reallocated to Joplin and ninety percent reallocated to the St. Louis Metro district.²²

17. At the hearing, the City of Riverside proposed yet another three-district consolidation. Under that option, Joplin and St. Joseph would each remain in their own district, with all other water systems being consolidated into a single district.²³

18. The fifth and final consolidation option would be to consolidate all the existing districts into one, and return to single-tariff pricing.²⁴

19. Missouri-American intends to retire the aged water treatment facility in the Platte County district by 2018.²⁵ The anticipated capital expense associated with replacing that water treatment facility makes Platte County an unattractive consolidation partner for the other existing districts.

20. The various water systems operated by Missouri-American are spread across the state and, because of the distance separating them are not physically interconnected.²⁶ Thus, for example, a customer in Joplin will never receive water from a treatment plant in

²¹ Smith Direct, Ex. OPC-15, Page 14, Line 1.

²² Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Revenue.

²³ This consolidation plan was proposed by the City of Riverside. See, Transcript, Pages 110-111, Lines 21-25, 1-4. Missouri-American subsequently presented calculations about the effect such consolidation would have on customer rates at Transcript, Page 356, Lines 14-23 and Ex. MAWC-51.

²⁴ Missouri-American calculated the rate impact of that option in Ex. MAWC-53.

²⁵ Dunn Direct, Ex. MAWC-4, Pages 23-26.

²⁶ Marke Direct, Ex. OPC-9, Page 6, Lines 1-7.

Warrensburg.²⁷

21. Despite the inherent differences in the various water systems, Missouri-American's annual cost to serve a residential customer is fairly consistent across the existing districts. For most districts, the annual cost to serve a customer is in the \$400 to \$500 range. The annual cost to serve a residential customer in the St. Louis Metro district, which serves 366,815 customers, is \$481.86 per year. The most significant outliers are Brunswick, which serves 330 residential customers at an annual customer cost of \$702.92, and Platte County, which serves 6,216 customers at an annual customer cost of \$1,031.48.²⁸

22. The consistency in costs to serve customers between districts is attributable to the fact that most of the costs of providing service to Missouri-American's customers are very similar, if not the same, from district to district because a portion of Missouri-American's statewide costs are allocated to the various districts. So, for example, Missouri-American's costs of capital will be the same for each of the districts. When Missouri-American buys pipe, meters, and other supplies, the cost of those supplies will be the same in all districts. Similarly, management salaries for Missouri-American's executives will be allocated equally to customers in each of the districts.²⁹

23. Consolidation of water rates will help address some structural problems within the water industry. Currently, water service in the United States and in Missouri tends to be very fragmented. As of 2010 there were over 52,000 Community Water Systems operating in the United States. Most of those systems are classified as small or very

²⁷ Transcript, Page 676, Lines 3-14.

²⁸ Herbert Rebuttal, Ex. MAWC-9, Schedule PRH-6.

small.³⁰

24. The same fragmentation problem can be seen in Missouri-American's service territory, where the St. Louis Metro water system serves 366,815 customers, while the remaining 18 systems serve a total of 92,624 customers. And more than half of those non-St. Louis metro customers are in either Joplin or St. Joseph.³¹

25. The fragmentation of the industry with many small systems serving very few customers creates affordability problems. The Federal and state governments have recently imposed many new regulations designed to protect public and environmental health. Those regulations are needed, but they impose a heavy burden on small systems with few customers. For example, the Environmental Protection Agency estimates that compliance with the Safe Drinking Water Act costs an average of \$4 per household per year for systems serving more than 500,000 people. But for systems serving no more than 100 customers, that annual cost rises to \$300 per household.³²

26. An easy demonstration is that a \$1 million water or sewer system capital project will cost each customer in a consolidated system with 460,000 customers a total of \$2.17. But if that \$1 million project is required in a system like Brunswick that serves 400 customers, the cost per customer is \$2,500. The same project in a system like Redfield would cost each of the system's 23 customers \$43,478.

27. Given those economies of scale problems, Missouri has many struggling small water and sewer companies. James Busch, the Regulatory Manager of the

²⁹ Busch Surrebuttal, Ex. Staff-12, Page 9, Lines 8-19.

³⁰ McDermott Direct, Ex. MAWC-12, Pages 6-7, Lines 16-19, 1-9.

³¹ Cassidy Surrebuttal, Ex. Staff-16, Page 2, Lines 17-37.

³² McDermott Direct, Ex MAWC-12, Pages 7-8, Lines 17, 1-3.

Commission's Water and Sewer Department,³³ explained that seven small water or sewer systems in Missouri are currently operating under the control of a receiver, and that the situation for small water and sewer companies is not improving.³⁴ He offered the opinion that: "[i]f consolidated pricing allows for MAWC or other entities to acquire troubled systems to keep them out of receivership, then consolidated pricing is a favorable change that could provide benefit to Missouri citizens without any undue burden or cost."³⁵

28. Mr. Busch also explained that the Commission's Staff spends a significant portion of its time speaking with owners and managers of many water and sewer utilities. That includes companies that are interested in possibly purchasing small water and sewer utilities that may not yet be in receivership. Through those interactions, Staff has become aware that "consolidated pricing is a major consideration in the decision to own and operate systems in Missouri and on whether or not to expand. It is Staff's opinion, based on its years of experience, that a move toward further consolidation will send a positive signal to those companies."³⁶

29. Mr. Busch has been the manager of the Commission's water and sewer department since 2008,³⁷ and the Commission is aware of his work with struggling water and sewer companies. His testimony in this regard is very credible.

30. In contrast to the fragmented rates common in the water and sewer industry, public electric and natural gas utilities generally charge their customers uniform rates no matter where within their system they happen to live. For example, a customer of a large

³³ Busch Surrebuttal, Ex. Staff-12, Page 1, Lines 16-18.

³⁴ Busch Surrebuttal, Ex. Staff-12, Page 13, Lines 1-17.

³⁵ Busch Surrebuttal, Ex. Staff-12, Page 13, Lines 20-23.

³⁶ Busch Surrebuttal, Ex. Staff-12, Page 14, Lines 4-11.

electric utility, such as Ameren Missouri, will pay the same rate for electricity whether they live in the middle of St. Louis or in a rural area of the Ozarks.³⁸ Obviously, an electric system is different than a water or sewer system in that the entire electric system is interconnected by a transmission grid. However, there can be no doubt that it costs more to serve an individual customer at the end of a miles-long line through the woods than it does to serve a customer in an apartment building in a densely populated urban area.³⁹

31. By spreading out the cost of mandated environmental upgrades over a larger number of customers, consolidated-tariff pricing will better promote improved and uniform water and environmental quality throughout Missouri-American's water and sewer service territory.⁴⁰ However, that ability to spread costs also carries with it the risk that Missouri-American will have an incentive to overbuild its water and sewer system to maximize shareholder profits if the constraints of customer affordability are reduced.⁴¹

32. To address that concern, Staff proposes that Missouri-American be required to file a five-year capital expenditure plan with the Commission for review by January 31 of each year after the effective date of rates in this case. Staff, and every party to this case, would then have the ability to review Missouri-American's plans and could make recommendations regarding investment and the need to make investments in any service area. All expenditures would be subject to full review in Missouri-American's future rate

³⁷ Transcript, Page 418, Lines 23-25.

³⁸ McDermott Direct, Ex. MAWC-12, Pages 12-13, Lines 23, 1-5.

³⁹ Busch Surrebuttal, Ex. Staff-12, Pages 10-11, Lines 19-23, 1-6.

⁴⁰ Busch Rebuttal, Ex. Staff-11, Page 8, Lines 5-14.

⁴¹ Marke Direct, Ex. OPC-9, Page 22, Lines 1-15. See also, Busch Rebuttal, Ex. Staff-11, Pages 8-9, Lines 18-23, 1-4.

cases.⁴²

33. A concern was raised that consolidated pricing would reduce Missouri-American's incentive to perform due diligence before acquiring new water systems and could impact the price Missouri-American is willing to pay to acquire new systems.⁴³ However, Missouri-American and other potential purchasers understand that this Commission has generally not recognized acquisition premiums for purchased systems. As a result, such systems are usually purchased based on the selling utility's rate base valuation, which keeps purchase prices in line with the system that is in place and avoids undue costs being passed to ratepayers.⁴⁴

34. Consolidated pricing will also tend to reduce administrative and regulatory costs by lowering the costs of billing and collections and by reducing the regulatory costs of having to calculate and file multiple rates within a rate case.⁴⁵ Staff agrees that consolidated pricing can significantly reduce the cost of preparing a future rate case.⁴⁶

35. All water systems will eventually require large capital investments.⁴⁷ If the cost of making those investments is spread among consolidated districts, in the long term any perceived short-term unfairness will be balanced out.

36. Since 2000, the Commission has set rates for Missouri-American based on a district-specific pricing theory. During that time Joplin and St. Joseph have incurred costs

⁴² Busch Rebuttal, Ex. Staff-11, Page 11, Lines 3-10.

⁴³ Collins Direct, Ex. MIEC-5, Page 6, Lines 15-21.

⁴⁴ Busch Rebuttal, Ex. Staff-11, Page 11, Lines 11-23.

⁴⁵ McDermott Direct, Ex. MAWC-12, Page 16, Lines 10-17.

⁴⁶ Busch Direct, Ex. Staff-9, Page 8, Lines 1-9. See also, Busch Surrebuttal, Ex. Staff-12, Page 15. Lines 5-15.

⁴⁷ Transcript, Pages 672-673, Lines 20-25, 1-20.

for major infrastructure projects that have not been spread among other districts.⁴⁸ However, rate payers do not pay all the expenses for a major capital project immediately. Instead, those costs are amortized over many years and recovered by the company through rates over that extended period of time. Thus, capital projects completed in recent years have not been fully paid for through rates and, because of consolidation, the remaining balance of those costs will be spread to other districts.⁴⁹

Sewer District Consolidation

The facts found regarding water district consolidation also apply to the question of sewer district consolidation and are incorporated herein. Additional facts regarding sewer district consolidation follow.

37. Staff proposed to consolidate Missouri-American's 12 existing sewer districts into five districts:⁵⁰

Sewer District 1	Sewer District 2	Sewer District 3	Sewer District 4	Sewer District 5
Arnold	Platte County	Cedar Hills	Jefferson City	Stonebridge
		Warren County	Maplewood	Saddlebrooke
		Anna Meadows	Ozark Meadows	Emerald Pointe
		Meramec		

Staff based its sewer district recommendations on geographic location, reasoning that the workers responsible for any given district will also have responsibility for nearby systems.⁵¹

38. Missouri-American proposed to consolidate its existing sewer districts into just

⁴⁸ Haase Rebuttal, Ex. Jop-1, Page 2, Lines 15-18.

⁴⁹ Transcript, Page 425, Lines 2-14.

⁵⁰ Busch Direct, Ex. Staff-9, Page 9, Lines 15-20.

two districts, with Arnold in one district and every other system in the second.⁵²

39. Arnold is by far Missouri-American's largest sewer system with 6,877 customers, far outpacing the second largest sewer district, Jefferson City, with 1,374 customers.⁵³ As such, it is reasonable for Arnold to be separated into its own district.

40. Arnold is also the source of a disagreement in this case. On April 27, 2015, Missouri-American's then-President Frank L. Kartmann sent a letter on behalf of Missouri-American to the City of Arnold, which was in the process of approving the sale of the Arnold system to Missouri-American. In that letter, Kartmann assured the City of Arnold that, absent any extraordinary circumstances, "the Arnold sewer bill for a 5,000 gallon monthly residential customer, currently at \$24.33 per month (based on \$73.00 per quarter), will not increase beyond \$33.58 per month during the first 4 years of Missouri-American's ownership."⁵⁴

41. At the time Staff filed its direct testimony, based on Staff's calculation of Missouri-American's revenue requirement, it estimated that the total increase in the cost of service for Missouri-American's sewer operations would be only \$39,345. Based on that estimate, Staff recommended leaving sewer rates at their current levels. Staff would have accounted for the resulting \$39,345 shortfall by taking it from its proposed District 2 for water service. Staff reasoned that taking the sewer shortfall from the water service side of the equation was reasonable because Missouri-American's overall corporate costs must be allocated in some manner between the company's water and sewer operations. Staff

⁵¹ Busch Direct, Ex. Staff-9, Pages 10-11, Lines 22-23, 1-2.

⁵² Herbert Direct, Ex. MAWC-7, Page 21, Lines 7-9.

⁵³ Cassidy Surrebuttal, Ex. Staff-16, Page 3, Lines 1-17.

⁵⁴ Ex. Staff-32.

believed the reallocation of \$39,345 was within the zone of reasonableness for those corporate allocations.⁵⁵

42. Despite its proposal to consolidate the sewer districts, Staff recommended that all existing sewer rates be left at their current levels.⁵⁶

43. In its cost allocation study, Missouri-American limited its allocation of corporate and joint and common costs to \$20 per year, per customer in small districts with less than 3,000 customers. In doing so, it reasoned that smaller districts do not require the same level of service as larger districts. It looked at the level of overhead costs the small districts typically incur and used that as the basis for the \$20 per customer allocation. The remaining corporate and joint and common costs were then allocated to the larger districts.⁵⁷ If the limited allocations to the small district are not used, the traditional allocation methods would allocate between \$50 and \$300 in costs per customer to the small districts, while the allocations would be less than \$20 per customer in the larger districts.⁵⁸

44. Staff did not accept Missouri-American's limited allocation of costs to the smaller districts and instead allocated those costs to the districts using what it believes to be an appropriate allocation factor.⁵⁹

45. The increase in Missouri-American's annual revenue requirement agreed to by the parties and established in this case is significantly larger than the amount Staff had recommended at the time it filed its direct testimony. Based on the then agreed upon

⁵⁵ Busch Direct, Ex. Staff-9, Pages 11-12, Lines 20-23, 1-5.

⁵⁶ Busch Direct, Ex. Staff-9, Page 11, Lines 15-16.

⁵⁷ Tinsley Direct, Ex. MAWC-35, Page 14, Lines 16-24.

⁵⁸ Tinsley Rebuttal, Ex. MAWC-36, Page 27, Lines 16-19.

\$30.6 million increase to the company's revenue requirement, the sewer shortfall was estimated to be \$2,055,059. \$1,489,263 of that shortfall was attributed to Arnold.⁶⁰

46. At the hearing, Staff Indicated the non-Arnold sewer shortfall was \$565,000 and proposed to assign and collect those additional costs from the three water districts proposed by Staff, with 80 percent of the \$565,000 to be collected from District 1, and 10 percent from each of District 2 and 3.⁶¹ Under Staff's proposal, existing sewer rates would not be changed as a result of this case.⁶²

47. Staff's proposal did not account for the \$1,489,263 sewer revenue shortfall attributable to Arnold. Staff took the position that unless Missouri-American was willing to increase Arnold's rates above the cap promised in Kartmann's letter to the City of Arnold, it believed that no additional allocations to the water district should be made and Missouri-American's shareholders could absorb those extra costs. The Staff's cost study showed that Arnold's rates would have to be increased by 44 percent to cover its full costs.⁶³

48. Mr. Busch testified for Staff that Mr. Kartmann told him in a phone conversation that Missouri-American shareholders would be responsible for any revenue shortfall resulting from the commitment to Arnold. Mr. Busch indicated that Staff did not believe it would be fair for other ratepayers to pick-up that shortfall on behalf of Missouri-American's shareholders. He also testified that he became concerned about Kartmann's commitment to Arnold only after it became apparent that there would be a significant

⁵⁹ Bolin Rebuttal, Ex. Staff-7, Page 3, Lines 13-20.

⁶⁰ Ex. MAWC-52. The amount of the shortfall will be changed to some extent by the revised stipulated revenue requirement increase of \$30.413 million. See footnote 1.

⁶¹ Transcript, Page 453, Lines 17-20.

⁶² Transcript, Pages 454-455, Lines 10-25, 1-13.

⁶³ Transcript, Page 457, Lines 6-20.

shortfall.⁶⁴

Conclusions of Law:

A. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must be “just and reasonable” and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... water corporation or sewer corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... water, sewer [service] ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No ... water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In sum, the statute says that utilities cannot give any “undue or unreasonable” preference or disadvantage to any particular customer, or class of customers, or locality.

B. Some parties argue that Section 393.130 requires the use of district-specific pricing and forbids the use of single-tariff pricing or even consolidated-tariff pricing. They are wrong.

C. The most cited case interpreting the meaning of “undue or unreasonable”

⁶⁴ Transcript, Pages 457-458, Lines 24-25, 1-19.

preference is *State ex rel. Laundry v. Public Service Commission*,⁶⁵ a 1931 decision by the Missouri Supreme Court. The *Laundry* decision arose from a complaint brought before the Commission by two laundry companies contending that they should be allowed to receive water service at the same reduced rate made available to ten manufacturing customers. In its decision, the Missouri Supreme Court found that the laundries were similarly situated to the manufacturing customers and should have been allowed to take water at the reduced manufacturer's rate. Specifically, the Court held that principles of equality "forbid any difference in charge which is not based upon difference in service" and found "there is no dissimilarity or difference in the service of furnishing and supplying water [to the manufacturing customers] and the service of furnishing and supplying water to the complainants herein".⁶⁶ *Laundry* does not say that only cost differences can be considered when the Commission decides whether there is any undue or unreasonable preference.

D. While a difference in charge must be based upon a difference in service, differences in services are not based solely on differences in cost to provide that service. In a 1978 case, *State ex rel. City of Cape Girardeau v. Public Service Commission*,⁶⁷ the City of Cape Girardeau challenged the design of the electric rates imposed on the city by the Missouri Utilities Company. The city contended that the rates charged to its citizens should be lower than the rates charged to surrounding rural areas because it was less expensive for the company to serve its customers within the more concentrated areas of the city. In denying the city's challenge, the Missouri Court of Appeals held that section 393.130(3)

⁶⁵ 34 S.W.2d 37 (Mo. 1931)

⁶⁶ *Laundry*, at 46.

forbids discrimination against persons as well as locations. The Commission's order and report made it clear that it was aware of this dual obligation and in this case chose to emphasize equity to the individual user by maintaining a rate system designed on the basis of cost to a class of customer rather than to an area. ... We cannot hold as a matter of law that the city was entitled to the relief it sought merely by showing a lower cost of service to the city area as a whole⁶⁸

The Missouri Court of Appeals further found that the record supported the Commission's decision to charge a single rate in both rural and urban areas even if it was assumed that it cost the company less to serve the Cape Girardeau urban area.⁶⁹

E. Similarly, in *State ex rel. City of West Plains v. Public Service Commission*,⁷⁰ the Missouri Supreme Court addressed the question of whether a telephone company could lawfully charge rates that included a surcharge to recover the license and occupation city taxes from the residents of the cities that imposed those taxes on the phone company. For purposes of this discussion, the most important portion of the Missouri Supreme Court's opinion is as follows:

We are able to discern no legitimate reason or basis for the view that a utility must operate exclusively either under a systemwide rate structure or a local unit rate structure, or the view that an expense item under a systemwide rate structure must of necessity be spread over the entire system regardless of the nature of the item involved. Experts in utility rates may well conclude that a 'hybrid system' or 'modified system' of rate making, wherein certain expense items are passed on to certain consumers and certain items are thereby treated on a local unit basis and others on a systemwide basis, is the system which will produce the most equitable rates. And it would appear to be the province and the duty of the commission, in determining the questions of reasonable rates, to allocate and treat costs (including taxes) in the way in which, in the commission's judgment, the most just and sound result is reached. ... And, in any event, the fact that an order may ignore 'the theory and practice of rate making and utility operation upon a systemwide basis'

⁶⁷ 567 S.W.2d 450 (Mo. App. St. L. 1978).

⁶⁸ *Cape Girardeau*, at 453.

⁶⁹ *Cape Girardeau*, at 453.

⁷⁰ 310 S.W.2d 925 (Mo. banc 1958).

does not, standing alone, tend to demonstrate the unlawfulness or unreasonableness of that order.⁷¹

Thus, the Missouri Supreme Court recognized that the Commission is not bound by statute to implement any particular theory of ratemaking. In this case, it is not bound to a theory of either district-specific or single-tariff pricing. Rather, the Commission must weigh the evidence presented and arrive at a decision that implements just and reasonable rates.⁷²

F. There is one more court decision that needs to be addressed. The Commission's 2000 Missouri-American rate case, in which the Commission announced its intention to move toward district-specific tariff pricing, was appealed by the City of Joplin. The Commission's decision had moved all other then-existing districts to district-specific pricing, but kept Joplin at the rates it had been paying under single-tariff pricing. If Joplin had also been moved to district-specific pricing along with the other districts, it would have seen a rate decrease amounting to \$880,000 per year. The Circuit Court of Cole County reversed the Commission's order for failing to offer sufficient findings of fact and conclusions of law to support its decision to reallocate Joplin's rate decrease to other districts. Because of procedural disputes the matter did not reach the court of appeals for decision until Missouri-American had filed its next rate case and new rates had been established. The Circuit Court of Cole County dismissed the appeal as moot, and that dismissal was appealed.

G. In *State ex rel. City of Joplin v. Public Service Commission*,⁷³ the Court of Appeals held that the City of Joplin's appeal was not moot because the legal principle upon

⁷¹ *West Plains*, at 933.

⁷² Section 393.130.1, RSMo (Cum. Supp. 2013).

⁷³ 186 S.W.3d 290 (Mo. App. W.D. 2005)

which the City of Joplin appealed was recurring and could evade appellate review. The Court expressed concern that the Commission's decision was unjustly discriminatory towards Joplin, but found that the Commission's inadequate findings of fact and conclusions of law precluded meaningful judicial review and remanded the matter to the Commission to prepare new, sufficient findings and conclusions. The decision did not mandate the use of district-specific pricing.

H. Section 393.320, RSMo (Cum. Supp. 2013), passed in 2010, establishes a procedure whereby a large water or sewer utility (more than 8,000 customers) attempting to acquire a small water or sewer system (8,000 or fewer customers) may establish a ratemaking rate base for the small system to be acquired. The purpose of the statute is to make it easier for a large water or sewer utility to acquire small systems. For purposes of this decision, the most relevant provision in the statute is subsection 6, which states:

Upon the date of the acquisition of a small water utility by a large water public utility, whether or not the procedures for establishing ratemaking rate base provided by this section have been utilized, the small water utility shall, for ratemaking purposes, become part of an existing service area, as defined by the public service commission, of the acquiring large water public utility that is either contiguous to the small water utility, the closest geographically to the small water utility, or best suited due to operational or other factors. This consolidation shall be approved by the public service commission in its order approving the acquisition.

I. This statute is important for two reasons. First, it shows that the legislature is aware of the affordability problems faced by small water systems and allows those problems to be ameliorated by consolidation with a larger service area for ratemaking purposes. That shows that the legislature is not hostile to the concept of consolidated-tariff pricing. It would be unreasonable to conclude that the legislature approved of consolidated tariff pricing for small water systems acquired after the statute passed in 2010, but forbade

it, and required district-specific pricing, for the small water systems acquired before the passage of the statute.

J. Second, the statute tends to undercut one argument presented in favor of consolidated tariff pricing; the argument that consolidated-tariff pricing is needed to reassure potential buyers of struggling water systems. If the statute already allows for consolidation of newly acquired water systems into larger districts, then it appears that no further reassurance of potential buyers is required. However, the application of the statute is limited in that it defines a “large water public utility” as a public utility that provides water to more than 8,000 customer connections.⁷⁴ In effect, Missouri-American is the only “large water public utility” currently operating in this state. Some other entity that wanted to buy multiple water or sewer systems in Missouri and consolidate them for ratemaking purposes would not be able to take advantage of this statute and might still need the reassurance that consolidated-tariff pricing may be available.

K. Commission Rule 4 CSR 240-2.115(2)(D) provides that a non-unanimous stipulation and agreement to which an objection is made, becomes merely a joint position of the parties signing the agreement. The signatory parties are not bound by their agreement and the Commission can adopt their joint position only if it is supported by competent and substantial evidence.

L. This rule is important because the parties that adhere to the Joint Position seem to assume that the Commission can adopt their position that some consolidation and reallocation of costs is appropriate because it is in their stipulation and agreement, while also adopting their other position that district-specific pricing is required by the controlling

⁷⁴ Section 393.320.1(1), RSMo (Cum. Supp. 2013).

statute. The two positions cannot be reconciled.

Decision:

The Commission's task in this case is to devise a rate structure that is just and reasonable for all Missouri-American's customers, no matter where they live within the company's service area. The Commission must also ensure that the rates it authorizes do not unduly or unreasonably grant a preference or impose a prejudice on any person, corporation, or locality. That is a difficult task that requires a great deal of balancing differing interests. Missouri-American's cost to serve its customers is one factor to be balanced, but it is not the only factor.

The needs of the customers must be met no matter where they happen to live, or how recently the company's infrastructure in their area was installed or replaced.

Consolidated pricing will help to meet the needs of all customers by sharing the cost of providing needed services among a larger group of customers, making the cost of service more affordable for all. Consolidation will limit rate shock when new infrastructure must be installed in a district with a small population, and all districts will eventually face that prospect.

Consolidation is not without risk. It averages rates and inevitably some customers will pay more than they pay now, and some will pay less. At least in the short term that will be seen by some as unfair, but, over the long term, the effects of consolidation will even out across the state. It is not reasonable to keep patching the current group of rate districts to deal with the needed, but unaffordable, infrastructure repairs and improvements as they occur.

There is also a concern that consolidation will give Missouri-American an incentive

to build more infrastructure than is needed so as to increase its rate base and increase profits for its shareholders. To avoid that problem, the Commission will adopt Staff's five-year capital planning report proposal.

The Commission will adopt Staff's consolidation plan as the best option at this time. Missouri-American has essentially abandoned its initial consolidation plan, and anyway, it did little to accomplish the purposes of a consolidation plan since it did little to spread costs. Similarly, the plan put forward in the Joint Position did not capture the benefits to be gained from consolidation and seemed to be little more than a plan to give a little something to various parties to obtain their signature on the compromise document.

Full single-tariff pricing is an attractive option, but since none of the parties proposed that option during the case it was not fully considered by the parties. Because of that lack of scrutiny, the option has many unknowns, and the Commission is not willing to take that leap at this time.

The Commission may need to make take that leap in Missouri-American's next rate case as it will likely be facing the prospect of a major new capital construction project in the Platte County district, a district that will have difficulty affording a major capital expense. For that reason, the Commission will expect the parties to fully examine single-tariff pricing in the next rate case.

Consolidation is also needed on the wastewater side of Missouri-American's business. The existing sewer districts are even more fragmented than the water districts. A separate problem has arisen regarding sewer service because of a promise made by Missouri-American's President to the City of Arnold. That promise to limit any sewer rate increases to Arnold's customers for four years after Missouri-American purchased the

system was made without consultation with Staff, or approval from the Commission. As a result, it will be the responsibility of Missouri-American's shareholders to support that promise if it has any effect.

The Commission will adopt Missouri-American's limitation on the allocation of corporate expense to small water and sewer companies. That may eliminate the so-called sewer shortfall that Staff had proposed to collect from Missouri-American's water customers.

The Commission will direct that the existing sewer districts be consolidated into two districts as proposed by Missouri-American. That will leave Arnold in its own sewer district, responsible for its own share of costs. If Arnold's rates need to rise above \$33.58 per month, the promised rate, to cover its share of costs, Missouri-American's shareholders shall be responsible for those extra costs.

For the other district, assuming there will be no shortfall in sewer revenue after the allocation of corporate expense to small companies is implemented, the rates currently paid by the individual sewer systems shall remain unchanged, as originally proposed by Staff. If there is a revenue shortfall for sewer, it shall be recovered pro rata among all the consolidated sewer systems and their individual rates shall be adjusted as necessary.

This treatment of sewer rates is necessary because no party actually addressed the rebalancing of sewer rates during the hearing, and the Commission does not wish to adjust those rates without more information. In the next rate case, the Commission intends to move the consolidated sewer systems toward a single, balanced rate.

Rate Design & Customer Charge

Background:

After a utility's revenue requirement is determined – in this case by agreement of the parties, approved by the Commission – a determination must be made as to how, and from whom, the utility will be allowed to recover the required revenue. That is the issue of rate design.

Findings of Fact:

1. Only Missouri-American and Staff performed cost of service allocation studies in this case, although experts engaged by other parties examined those studies and suggested revisions to them. Missouri-American's study was presented in the direct testimony of Paul Herbert.⁷⁵ Staff's study was presented in its Report on Class Cost of Service and Rate Design.⁷⁶

2. Missouri-American's study allocated costs to serve fourteen different water districts and summed those costs to arrive at a state-wide cost of service.⁷⁷ It separately performed a state-wide class cost of service study to allocate costs to four classes of customers. Those classes are:

Rate A, consisting of residential, commercial, small industrial, and other public authorities customers, Rate B, consisting of sales for resale customers, Rate J, consisting of large users, and Rate F, private fire protection customers. The cost of service associated with public fire protection was identified and reallocated back to the Rate A and Rate J classifications.⁷⁸

⁷⁵ Ex. MAWC-7.

⁷⁶ Ex. Staff-3.

⁷⁷ Herbert Direct, Ex. MAWC-7, Page 4, Lines 6-16.

⁷⁸ Herbert Direct, Ex. MAWC-7, Page 4, Lines 17-22.

Staff used the same four customer classifications in its cost of service study.⁷⁹

3. Both Missouri-American and Staff used the Base-Extra Capacity Method in preparing their studies. That method is outlined in the American Water Works Association manual of water supply practices and is the method generally accepted by the industry. It has been used in past Missouri-American rate cases by both Staff and Missouri-American.⁸⁰

4. In the Base Extra Capacity Method, costs of service are generally classified into the following four primary cost components as described in Staff's testimony:

Base costs are the costs that vary with the amount of water used and operation under average load conditions. Base costs are allocated to customer classifications according to the amount of water consumed.

Extra capacity costs are the costs associated with meeting the requirements that are in excess of the average load conditions. The extra capacity costs include operation and maintenance expenses and capital costs for system capacity above what is required for the average rate of use.

Customer costs are those costs associated with serving customers, regardless of the amount of water consumed. Those costs include customer accounting and collection expenses, meter-reading, billing, and capital costs related to meters and services.

Fire protection costs are those costs directly assigned to fire protection functions.⁸¹

5. Staff's study used nineteen factors to allocate the various costs to the customer classes. A description of each of those factors can be found in Staff's Report on Class Cost of Service and Rate Design.⁸² Missouri-American used a similar set of factors

⁷⁹ Staff Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 2.

⁸⁰ Staff Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 2.

⁸¹ Staff Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 2.

⁸² Ex. Staff-3, Pages 3-5.

to allocate those costs.⁸³

6. Since Missouri-American and Staff use the same cost allocation method and cost allocation factors, their studies reach the same general results.

Purchased Power Allocation

7. MIEC's witness, Brian Collins, generally agreed with Missouri-American's cost of service study, but he challenged the allocation factor used to allocate Purchased Fuel / Power for Pumping costs for the St. Louis Metro district. The Missouri-American study allocated those costs under Factor 1, which allocates costs based on class annual water volume. Collins argued that such pumping costs vary in part on customer peak demands and should be allocated on that basis,⁸⁴ using Factor 3, which is tied to average flow and maximum day demand requirements.⁸⁵

8. Collins' proposed modification would have the primary effect of shifting some costs from Rate J, which is the large user class, to Rate A, which is the residential and commercial class.⁸⁶

9. Collins cites the American Water Works Association's Manual M-1, Principles of Water Rates, Fees and Charges, Sixth Edition, as support for his modification of Missouri-American's cost study.⁸⁷ In his reply to Collins, Missouri-American's witness, Paul Herbert, quoted that manual as saying "the demand portion of power costs should be allocated to extra capacity **to the degree that it varies with the demand pumping**

⁸³ Herbert Direct, Ex. MAWC-7, Schedule C.

⁸⁴ Collins Direct, Ex. MIEC-5, Pages 9-10, Lines 14-22,1-2.

⁸⁵ Collins Direct, Ex. MIEC-5, Page 10, Lines 10-17.

⁸⁶ Collins Direct, Ex. MIEC-5, Page 11, Lines 8-18. See also, Smith Rebuttal, Ex. OPC-16, Pages 5-6, Lines 17-21, 1-6.

⁸⁷ Collins Direct, Ex. MIEC-5, Page 10, Lines 3-9. The manual cited by Collins is not in the record.

requirements.” (emphasis added in Herbert’s testimony).⁸⁸ Herbert analyzed Missouri-American’s power bills and concluded that only approximately 4.5 percent of the total purchased power expense can be attributed to extra demand. A reallocation of 4.5 percent of the total purchased power costs would reduce the amount of costs allocated to Rate J by only \$24,160, or about 0.35 percent of the total costs allocated to Rate J. That is an insignificant amount.⁸⁹

Declining Block Rates

10. Missouri-American proposes to implement a one-block uniform volumetric rate throughout its water districts for all rate classes.⁹⁰ Currently, Missouri-American uses a one-block uniform volumetric rate in its St. Louis Metro district, but uses a declining block volumetric rate structure for non-residential customer rate classifications for other districts, most notably the St. Joseph district. Staff proposes to continue that structure for its proposed districts that do not include the St. Louis Metro area.⁹¹

11. The Public Water Supply Districts of Andrew County, Nos. 1 and 2 are parties to this case. They appeared and participated at the hearing, but did not present any testimony. Legal Counsel for the Water Supply Districts offered an opening statement at the hearing and filed post-hearing briefs addressing the continuation of declining block rates under which they take service through the St. Joseph district. The Water Supply Districts purchase their entire water supply from Missouri-American and then resell that water to their customers. They currently benefit from declining block rates and ask that

⁸⁸ Herbert Rebuttal, Ex. MAWC-9, Page 8, Lines 4-6.

⁸⁹ Herbert Rebuttal, Ex. MAWC-9, Pages 7-8, Lines 4-27, 1-15.

⁹⁰ Herbert Direct, Ex. MAWC-7, Page 14, Lines 12-17.

⁹¹ Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 6.

they be continued.⁹²

12. In a single block rate structure the commodity rate a customer pays remains constant regardless of the amount of water the customer uses. A declining block rate establishes one or more additional rate blocks by which the customer pays less per gallon of water as usage increases. In other words, the additional gallons consumed in the higher usage rate block are cheaper than the first gallons consumed in the lower usage rate block.⁹³

13. It is also possible to design volumetric rates using inclining blocks. Under such a structure, customers would pay more for water as they increase their usage. Such a structure would be designed to encourage water conservation by discouraging discretionary water usage, such as outdoor watering or other summer use.⁹⁴

14. Conservation of water is important for more than just a need to conserve the supply of water. Water and wastewater supply processes are energy intensive. Large amounts of electricity are required to pump water through the pumping stations, treatment facilities and distribution system.⁹⁵ Thus, the promotion of water efficiency leads to the promotion of energy efficiency.⁹⁶

15. The establishment of inclining block rates would further promote efficiency, but none of the parties advocated for the establishment of inclining block rates in this case, although the Division of Energy's witness suggested they should be implemented in a

⁹² The Public Water Districts' opening statements on this issue can be found at Transcript Pages 312-320 and Page 564. The statements of counsel and briefs are not evidence and are cited only to provide background information on this issue.

⁹³ Report on Class Cost of Service and Rate Design, Ex. Staff-3, Page 6.

⁹⁴ Herbert Supplemental, Ex. MAWC-8, Page 5, Lines 9-16.

⁹⁵ Epperson Direct, Ex. DE-1, Pages 3-4, Lines 14-21, 1-18.

⁹⁶ Hyman Direct, Ex. DE-4, Page 3, Lines 2-3.

future rate case.⁹⁷

16. Inclining block rates are difficult to design in a way that will ensure Missouri-American recovers its approved revenue requirement.⁹⁸ The data required to properly design inclining block rates is not available in this case.⁹⁹

Customer Charge

17. A customer charge is the fixed amount a customer is charged on each bill without regard to the amount of water they consume. In contrast, volumetric charges on the customer's bill vary with the amount of water consumed.¹⁰⁰ Missouri-American's revenue requirement has already been determined, and the company will be allowed an opportunity to recover that revenue requirement through a combination of a customer charge and volumetric rates. That means a decrease in the allowed customer charge will necessarily increase the volumetric charge. Of course, that also means an increase in the customer charge will decrease the volumetric charge.¹⁰¹

18. Customer charges should be established at a level that will allow the utility to recover "customer-related costs" based on the number of customers served by a utility, not based on the amount of water they consume. In general, customer-related costs would include things like meter-reading, billing, and meter and service line-related costs.¹⁰²

19. In general, utilities prefer to recover as many of their fixed costs as possible through the customer charge, recognizing that not all fixed costs can be described as

⁹⁷ Hyman Direct, Ex. DE-4, Page 6, Lines 13-19.

⁹⁸ Transcript, Pages 788-789, Lines 13-25, 1-5.

⁹⁹ Transcript, Page 819, Lines 13-25.

¹⁰⁰ Herbert Supplemental, Ex. MAWC-8, Page 2, Lines 10-13.

¹⁰¹ Herbert Supplemental, Ex. MAWC-8, Page 4, Lines 19-21.

¹⁰² Hyman Direct Ex. DE-4, Page 4, Lines 1-14.

customer costs.¹⁰³ Utilities prefer to recover their fixed costs through fixed customer charges because that rate structure removes the risk that the company will not sell enough volumes of water to cover its fixed costs. The other side of the coin is that consumer groups and environmental groups prefer to require the utility to recover its costs through volumetric rates. That allows customers more control of their total bill if they can reduce their use of water.¹⁰⁴

20. If Missouri-American were to attempt to recover all its fixed costs through a customer charge, in other words, through a straight-fixed variable rate structure, its monthly customer charge for a customer with a 5/8 inch meter, which would be a typical residential customer, would need to be approximately \$56.¹⁰⁵

21. Missouri-American did not request a straight-fixed variable rate structure in this case. Instead, it performed a cost study that supported a fixed monthly customer charge of \$16.90 for a customer with a 5/8 inch meter.¹⁰⁶ Missouri-American would collect that same customer charge from all customers statewide.¹⁰⁷ Missouri-American currently collects 21.5 percent of its total revenues from its existing customer charge. If its proposed increased customer charge were adopted, it would collect approximately 25 percent of its total revenues from its customer charge.¹⁰⁸

22. Staff also performed a cost study. However, rather than propose a single-statewide customer charge, Staff recommends that a different customer charge be

¹⁰³ Transcript, Page 613, Lines 3-19.

¹⁰⁴ Transcript, Page 782, Lines 12-18.

¹⁰⁵ Herbert Direct, Ex. MAWC-7, Page 20, Lines 14-19.

¹⁰⁶ The amount of the customer charge would increase proportionately as customer meter sizes increase.

¹⁰⁷ Transcript, Page 625, Lines 1-4.

established in each of the three consolidated district recommended by Staff. Staff would set the customer charge at \$16.46 for District 1¹⁰⁹, \$14.83 for District 2, and \$14.56 for District 3.¹¹⁰

23. Both Missouri-American and Staff altered their proposed customer charges during the course of the rate case proceeding. Missouri-American initially proposed a customer charge of \$17.40, but reduced that amount to \$16.90 when it re-ran its model using the lower revenue requirement agreed to by the parties.¹¹¹ Staff initially proposed monthly customer charges of \$11.06 for District 1, \$10.57 for District 2, and \$9.32 for District 3.¹¹² Staff increased its recommended customer charge for various reasons, including a recognition that the agreed-upon revenue requirement increase was significantly greater than originally modeled by Staff.¹¹³

24. The most significant cause for the difference between the customer charge recommendations of Staff and Missouri-American results from their differing treatment of public fire protection costs in their cost studies. Staff would have Missouri-American recover those costs through its volumetric rates, while Missouri-American would recover them through the customer charge.¹¹⁴

25. Missouri-American contends public fire protection costs are fixed costs that do not vary with water usage, so they must be recovered through customer charges.¹¹⁵ But

¹⁰⁸ Transcript, Page 395, Lines 13-23.

¹⁰⁹ Staff's proposed District 1 includes the current St. Louis Metropolitan district.

¹¹⁰ Transcript, Page 796, Lines 1-4.

¹¹¹ Transcript, Pages 624-625, Lines 25, 1-11.

¹¹² Report on Class Cost of Service and Rate Design, Ex. Staff-3, Schedules 2-1, 2-2 and 2-3.

¹¹³ Transcript, Page 795, Lines 4-25.

¹¹⁴ Transcript, Page 796, Lines 10-25.

¹¹⁵ Herbert Rebuttal, Ex. MAWC-9, Page 4, Lines 30-39.

the mere fact that such costs are fixed does not make them customer-related costs that should be recovered through the customer charge. Missouri-American points to nothing about fire protection costs that would make them customer-related. The Commission finds that such costs are not customer-related and, therefore, should be recovered through volumetric rates rather than through the customer charge. As a result, Staff's cost study relating to the customer charge is more reliable, and the customer charge amount advocated by Staff is more appropriate.

26. The other difference between the customer charge recommendations of Missouri-American and Staff is that Missouri-American advocates a single, state-wide customer charge, while Staff would vary that charge between its three proposed districts. The Commission finds that there is little difference between districts in the costs attributed to customer costs. As Mr. Herbert testified for Missouri-American;

All customers have a similar service line and meter, all have their meter read for billing either monthly or quarterly, all are billed from a centralized billing facility, and all receive customer service from a shared call center."¹¹⁶

The Commission agrees that there is no compelling reason to create the additional complication and confusion that would result from having slightly different customer charges in the three districts.

27. Staff did not offer testimony at the hearing about what its recommended customer charge would be if a single charge were calculated to be applied to all districts. However, Staff's witness agreed to make that calculation and to provide that information to the Commission after the hearing.¹¹⁷ Staff did so in a pleading filed on April 7, reporting that Staff's system-wide customer charge would be \$15.33 for a customer with a 5/8 meter.

¹¹⁶ Herbert Rebuttal, Ex. MAWC-9, Page 5, Lines 16-19.

28. No other party performed a cost study to support a proposed customer charge. However, the Division of Energy offered criticisms of the Missouri-American and Staff studies to advocate for a lower customer charge.¹¹⁸ Martin Hyman, witness for the Division of Energy, challenged the inclusion of uncollectable account expense for recovery through the customer charge in the cost studies of both Missouri-American and the Staff. He argued that “each customer within a class is not equally responsible for costs associated with uncollectable expenses. Therefore, uncollectable expenses should not be collected on a uniform basis through the customer charge.” He further argued that “uncollectable accounts expense generally varies with the level of revenue and should be recovered through variable charges which change with the amount of use.” Hyman offered no facts in support of either of those statements.¹¹⁹

29. In its initial brief, Public Counsel removed both the public fire protection costs and the uncollectable costs from Missouri-American’s calculation of the customer cost and arrived at a customer charge of \$13.76, which Public Counsel contends is appropriate.¹²⁰

30. Paul Herbert, witness for Missouri-American, contends that uncollectable accounts do not vary with usage, rather they vary with the number of customers. He also demonstrated that uncollectables are overwhelmingly attributable to the residential class.¹²¹ The Commission finds Mr. Herbert’s testimony in this regard to be credible. There is no reason to believe that customers who do not pay their bills use more water than others, or that they fail to pay their bill when they use more water. Rather, a percentage of customers

¹¹⁷ Transcript, Pages 815-817, Lines 20-25, 1-25, and 1-8.

¹¹⁸ Transcript, Pages 770-771, Lines 22-25, 1-12.

¹¹⁹ Hyman Direct, Ex. DE-4, Page 13, Lines 7-13.

¹²⁰ Public Counsel’s Initial Brief, Page 11.

will not pay their bills regardless of how much water they use. Thus, as the total number of customers rises, uncollectables will also rise. That makes it a customer-related cost that is appropriately recovered through the customer charge on an equal basis from all customers, rather than through volumetric charges that would collect more from those customers who consume larger volumes of water.¹²²

31. The Joint Position held by the signatories to the objected-to rate design stipulation and agreement advocates for a single statewide customer charge of \$14.42 per month for a 5/8 inch meter customer. That is the current St. Louis Metro customer charge.¹²³

32. Generally, regulated prices are not set at a utility's marginal cost of providing service, because to do so would deny the utility its ability to recover its prudently incurred sunk costs.¹²⁴ No marginal cost study has been performed in this case, and Public Counsel's witness, Dr. Marke, acknowledged that performing a reliable marginal cost study in this case would represent a "herculean" task.¹²⁵

Conclusions of Law:

A. Section 393.130.1, RSMo (Cum. Supp. 2013) requires that all charges made by a water corporation must be "just and reasonable".

¹²¹ Herbert Rebuttal, Ex. MAWC-9, Page 9, Lines 4-25.

¹²² Transcript, Page 579, Lines 1-11.

¹²³ Non-Unanimous Stipulation and Agreement on Rate Design, District Consolidation and Sewer Review, Page 1.

¹²⁴ McDermott Rebuttal, Ex. MAWC-13, Page 11, Lines 22-26.

¹²⁵ Marke Surrebuttal, Ex. OPC-12, Page 4, Lines 19-20.

Decision:**Purchased Power Allocation**

MIEC proposed to modify Missouri-American's class cost of service study to change the allocation factor used to allocate Purchased Fuel / Power for Pumping Costs. If adopted, that proposal would tend to shift some costs from the large user class, Rate J, to the residential and commercial class, Rate A. That shift of costs would have a direct effect only on Missouri-American's class cost of service study. It would not have a direct effect on the rates charged by the company. Missouri-American's witness demonstrated that when properly understood, the proposed change to the allocation factor would have only an insignificant effect on the allocation of costs within the study. The proposed modification is neither necessary nor appropriate and shall not be made.

Declining Block Rates

Missouri-American proposes to use a one-block uniform volumetric rate in all its water districts for all rate classes, thereby eliminating some existing declining block rates for non-residential rate classifications for some of its districts. The Commission believes it is important to encourage the conservation of water, and as a result, conservation of the energy needed to pump and treat that water. Declining block rates discourage conservation of water and are therefore inappropriate. The Commission will adopt Missouri-American's proposal to use a one-block uniform volumetric rate in all its water districts for all rate classes. In the next rate case, the Commission asks the parties to file information on inclining block rates so the Commission can consider the information in setting just and reasonable rates in that case.

Customer Charge

In determining the amount of the customer charge that Missouri-American may recover from its customers, the Commission has attempted to set a charge that will be fair to both the company and its customers. The best way to do that is to look to a cost of service study to determine which of the company's costs can best be identified as customer costs for which the company should be allowed to recover through the customer charge. For the reasons described in the Commission's findings of fact, the cost study prepared by Staff best establishes the cost basis for a reasonable and appropriate customer charge. Although Staff proposed to use that study to establish distinct customer charge amounts for each of its three water districts, the Commission believes that it is more appropriate to establish a single state-wide customer charge for Missouri-American. Therefore, the Commission will order Missouri-American to implement a customer charge in the amount recommended by Staff, modified to establish a single state-wide customer charge.¹²⁶

The Division of Energy and Public Counsel urge the Commission to exercise its discretion to order as low a customer charge as possible. Division of Energy desires a low customer charge with a correspondingly high commodity charge because it believes that will provide customers with more incentive to conserve water. Public Counsel desires a low customer charge because it believes a low charge will benefit lower income customers whom it believes tend to use less water.

¹²⁶ As previously indicated, Staff represented that amount to be \$15.33 per month for customers with a 5/8 meter. Customer charges for customers with larger sized meters shall be established in the same manner based on Staff's customer cost study.

The Commission has an obligation to establish just and reasonable rates that are fair to all concerned. It is fair for Missouri-American to be able to recover customer-related costs through a customer charge. Anything else is unfair to not only the company, but also to customers who use higher amounts of water and thus are disadvantaged by the higher volumetric rates that must accompany a lower customer charge. There is no absolute definition of what is, or is not, a customer cost,¹²⁷ but Staff's customer cost study has done a good job of identifying those costs and is the appropriate basis for establishing a just and reasonable customer charge.

Low-Income Tariffs

Findings of Fact:

1. Missouri-American proposes to implement a special low-income water rate that would offer eligible low-income customers an 80 percent discount on the customer charge for a residential 5/8 inch meter. Discounting the customer charge would help keep water service affordable to qualified customers, while sending appropriate pricing and demand-side efficiency signals to the customers through the undiscounted volumetric charge.¹²⁸ Since the Commission has established a customer charge of \$15.33 in this report and order, the program would discount the customer charge for eligible customers by \$12.26, leaving a customer charge of \$3.07 for eligible customers.

2. Eligibility for the discount would be based on a determination of eligibility for participation in the Missouri Low Income Home Energy Assistance Program (LIHEAP).

¹²⁷ Public Counsel and Division of Energy have edged toward defining customer costs as the incremental cost of adding one more customer to the company's system. Incremental or marginal cost is not an appropriate definition of customer cost because a calculation of incremental or marginal costs, even if possible, would not allow the company to recover its sunk costs for things like meters and service lines, which all parties seemingly agree are a part of customer costs.

Eligibility requirements for LIHEAP assistance are based on income, household size, available resources, and responsibility for payment of home heating costs.¹²⁹ A customer's eligibility for LIHEAP would be determined by their local Community Action Agency.¹³⁰

3. Missouri-American proposed that the low-income discount program be implemented throughout all its Missouri service area. Based on 2014 poverty figures, it estimated that 57,900 customers would be eligible statewide.¹³¹ The company further estimated that 30 percent of eligible customers would actually participate in the discount program, at an annual cost to the company of \$960,000.¹³²

4. Because the exact cost of the program cannot be known at this time, Missouri-American proposed that it be allowed to defer the cost of the program as a regulatory asset for possible recovery in its next rate case.¹³³

5. Because of the uncertainties associated with the low-income discount program, several parties suggested the program be implemented as an experimental pilot program. Missouri-American's witness suggested that the St. Joseph district be chosen as the site for the pilot program based on the fact that many witnesses at the local public hearing in St. Joseph expressed concerns about the affordability of their water bills.¹³⁴

6. One of the purposes of the pilot program would be to study the impact of the low-income discount on the amount of uncollectable charges (bad debt) experienced by

¹²⁸ Tinsley Surrebuttal, Ex. MAWC-37, Page 5, Lines 5-13.

¹²⁹ Tinsley Surrebuttal, Ex. MAWC-37, Page 5, Lines 15-23.

¹³⁰ Transcript, Page 841, Lines 4-12.

¹³¹ Transcript, Page 841, Lines 16-21.

¹³² Transcript, Page 842, Lines 18-25.

¹³³ Transcript, Page 846, Lines 1-5.

¹³⁴ Transcript, Page 851, Lines 2-4.

Missouri-American.¹³⁵

7. Implementation of the low-income pilot program in a limited portion of Missouri-American's service territory would better allow for study and comparison of the effects of the program on a range of communities.¹³⁶

8. The exact cost of the low-income pilot program cannot be known in advance. But limiting the program to a smaller population will significantly reduce the cost from that estimated by Missouri-American for a program applicable to all its customers.

Conclusions of Law:

A. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must be "just and reasonable" and not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

No ... water corporation or sewer corporation ... shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for ... water, sewer [service] ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No ... water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

¹³⁵ Transcript, Pages 849-850, Lines 21-25, 1-16.

¹³⁶ Transcript, Page 865, Lines 15-18.

In sum, the statute says that utilities cannot give any “undue or unreasonable” preference to any particular customer, or class of customers.

B. Note that the statute does not prohibit any such preference, only preferences that are “undue or unreasonable”. The parties have not identified, and the Commission has not found, any court decisions that have directly addressed the question of whether a low-income rate would be an “undue or unreasonable” preference.

C. The parties suggest the Commission adopt the low-income rate proposed by Missouri-American as a limited, experimental rate. The Missouri Supreme Court has long held that the Commission has the authority to grant interim test or experimental rates as a matter of necessary implication from practical necessity.¹³⁷ By experimenting with this low-income rate, the Commission will be better able to evaluate the reasonableness of the rate and any preference in Missouri-American’s next rate case.

Decision:

The Commission will authorize Missouri-American to implement a residential low-income program providing eligible low-income customers with an 80 per cent discount on the customer charge for a residential 5/8-inch meter. This will be an experimental pilot program that shall end on the effective date of new rates to be established in Missouri-American’s next general rate proceeding. An experimental pilot program will allow the parties and the Commission to evaluate the effectiveness of such a program as well as the administrative requirements, delivery systems, marketing and participation rates involved in such a program. The program will be reviewed in Missouri-American’s next rate case.

The Commission will not identify a specific city or area in which the low-income pilot

¹³⁷ *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm’n*, 535 S.W.2d 561, 567, n 1 (Mo. App. 1976).

program should be implemented. Instead, the Commission will direct Missouri-American to work with Staff, Public Counsel, and any other interested stakeholders to identify a city, district, or other portion of its water service territory that will be most suitable for implementation of the pilot program. In making that choice, Missouri-American and the other stakeholders should consider the relative poverty of the customers and the existing level of bad debt within the chosen area. While the Commission is establishing the broad parameters of the program in this order, Missouri-American and the interested stakeholders may craft the details of the program as they see fit.

Missouri-American customers in the chosen area may establish eligibility by contacting their local community action agency and establishing that they would qualify for the Missouri Low Income Home Energy Assistance Program (LIHEAP), whether or not they actually participate in LIHEAP. Customers shall reestablish eligibility on an annual basis.

Missouri-American is authorized to record on its books a regulatory asset that represents the actual discounts provided to those customers participating in the Low-Income Program, along with any third-party administrative costs. Missouri-American shall maintain this regulatory asset on its books until the effective date of rates resulting from Missouri-American's next general rate proceeding. The amortization period for the deferred regulatory asset associated with the Low Income Program shall be determined in the next Missouri-American general rate proceeding.

Missouri-American shall file a tariff consistent with this order no later than 120 days after the effective date of this order.

Union Issues

Background

The parties identified three issues raised by Missouri-American's union. The parties agreed among themselves that the Union issues would be presented to the Commission based on prefiled testimony and written briefs. Those issues follow

1. Should the Commission condition any rate increase upon Missouri-American filling unfilled bargaining unit positions?
2. Should the Commission order semi-annual reporting of various items as urged by the Unions? and
3. Should the Commission order Missouri-American to comply with and implement American Water Works' valve maintenance program?

The Commission will take up all three issues together.¹³⁸

Findings of Fact

1. Utility Workers Union of America, Local 335 is the union representing approximately 355 members who work for Missouri-American.¹³⁹
2. The vice-president of the union local, Alan Ratermann, offered pre-filed testimony on behalf of the union. He expressed concern that Missouri-American is not hiring enough bargaining-unit employees to fill vacant positions with the company. As of October 31, 2015, Missouri-American employs 68 fewer bargaining-unit employees than it did on December 31, 2010.¹⁴⁰ Ratermann is concerned that the reduced employment

¹³⁸ No testimony regarding the Union issues was presented at the hearing and the parties are deemed to have waived cross-examination of the witnesses who offered that pre-filed testimony.

¹³⁹ Ratermann Direct, Ex. Union-1, Page 2, Lines 3-4.

¹⁴⁰ Ratermann Direct, Ex. Union-1, Page 2, Lines 14-16.

levels could affect Missouri-American's ability to offer safe and adequate service, but he offered no specific facts to support a conclusion that the company has failed to offer safe and adequate service.¹⁴¹

3. Missouri-American fills positions as business needs dictate. It may reduce its workforce when it finds a more efficient way to perform operations, such as by replacing obsolete equipment and automating processes.¹⁴² The Commission finds that Missouri-American employs a suitable workforce sufficient to provide safe and adequate service.

4. The union also expressed concern that Missouri-American is failing to properly maintain the many valves present in its water distribution system. It believes Missouri-American should undertake a valve exercising program, through which valves are opened and closed periodically to ensure they are capable of operating properly.¹⁴³

5. The union points out that Missouri-American's corporate parent, American Water Company, has developed a valve inspection and maintenance practice for its subsidiaries, and contends Missouri-American should be ordered to comply with those practices,¹⁴⁴ including a requirement to hire additional employees to engage in the valve maintenance program.¹⁴⁵

6. Finally, the union contends the Commission should require Missouri-American to file detailed semi-annual reports about its valve inspection and maintenance practices.¹⁴⁶

7. American Water Company does not require Missouri-American to follow its

¹⁴¹ Ratermann Direct, Ex. Union-1, Page 3, Lines 9-20.

¹⁴² Wood Rebuttal, Ex. MAWC-41, Page 10, Lines 12-19.

¹⁴³ Ratermann, Direct, Ex. Union-1, Page 5, Lines 16-22.

¹⁴⁴ Ratermann, Direct, Ex. Union-1, Pages 6-7, Lines 7-23, 1-4.

¹⁴⁵ Ratermann Direct, Ex. Union-1, Page 8, Lines 17-19.

¹⁴⁶ Ratermann Direct, Ex. Union-1, Page 8, Lines 9-17.

recommended valve exercising practice. Rather, Missouri-American is free to adopt all or part of that practice to meet its needs.¹⁴⁷

8. Missouri-American exercises its valves and performs required repair and maintenance as it operates, maintains, and repairs the rest of its water distribution system. It assigns valve maintenance work as fill-in work for crews when main breaks are at a low level.¹⁴⁸

9. Establishment of a required valve maintenance program and the imposition of reporting requirements about such a program would increase costs for Missouri-American.¹⁴⁹ Such costs would ultimately be recovered from ratepayers.

Conclusions of Law

A. Section 393.130.1, RSMo (Cum. Supp. 2013), requires every water and sewer corporation, including Missouri-American, to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”

B. Section 393.140(1), RSMo 2000 gives this Commission general supervisory authority over all water and sewer corporations, again including Missouri-American. Subsection (2) of that statute authorizes the Commission to examine or investigate the operations of such utilities and to:

order such reasonable improvements as will promote the public interest, preserve the public health and protect those using such ... water or sewer system, and those employed in the manufacture and distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable

¹⁴⁷ Wood Rebuttal, Ex. MAWC-41, Page 11, Lines 18-24.

¹⁴⁸ Wood Rebuttal, Ex. MAWC-41, Page 12, Lines 2-14.

¹⁴⁹ Wood Rebuttal, Ex. MAWC-41, Pages 12-13, Lines 18-24, 1-5.

devices, apparatus and property of ... water corporations and sewer corporations.

Based on the authority given by that statute, the Commission may exercise a great deal of control over Missouri-American's operations.

C. But, while the Commission has authority to regulate Missouri-American to ensure it provides safe and adequate service, the Commission does not have authority to manage the company. The Missouri Court of Appeals has explained:

The utility's ownership of its business and property includes the right of control and management, subject, necessarily to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may chose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.¹⁵⁰

Therefore, except as necessary to ensure the provision of safe and adequate service, the Commission does not have the authority to dictate to the company how many employees it must hire to perform the work of the company.

D. Section 393.140, RSMo 2000, gives the Commission authority to inspect and investigate water and sewer systems and to examine the records and books of water and sewer corporations, including Missouri-American.

Decision:

The evidence presented by the Union does not demonstrate that Missouri-American has failed to provide safe and adequate service. Therefore, the Commission will not dictate to the company how many new employees it must hire. Furthermore, there is no

¹⁵⁰ *State ex rel. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177, 181-182 (Mo.App. W.D. 1960), (continued on next page ...)

demonstrated need for the Commission to direct Missouri-American to undertake any particular valve maintenance program at this time. To do so would be an unwarranted intrusion on the management of the company.

The Commission further concludes there is no need to impose a new reporting requirement on Missouri-American as Staff can already obtain whatever information it needs from the company. Further, additional reporting requirements would ultimately increase costs for Missouri-American's ratepayers.

Quality of Water in Platte County

Findings of Fact:

1. Customers in some subdivisions in Platte County have experienced problems with the quality of their water. At the Local Public Hearing held in Riverside on February 1, 2016, several customers testified about excessive amounts of scale buildup in their pipes and appliances resulting from the water delivered to their homes by Missouri-American.¹⁵¹

2. During cross-examination, Missouri-American's President, Cheryl Norton, explained that Missouri-American must soften the water that comes from its treatment facility in Platte County so that calcium introduced in the softening process will inhibit corrosion in pipes and prevent lead from leaching into drinking water. Unfortunately, in certain homes, calcium intermittently settles out in large amounts.¹⁵² The large amounts of calcium damage the customers' pipes and appliances.¹⁵³ The calcium issue does not

citing *State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 30 S.W.2d 8, (Mo. banc 1930).

¹⁵¹ Transcript, Public Hearing, February 1, 2016, Riverside, Missouri.

¹⁵² Transcript, Page 121, Lines 3-22.

¹⁵³ Transcript, Page 122, Lines 16-23.

affect the safety of the drinking water.¹⁵⁴

3. The problem has been going on for several years. Missouri-American has not yet been able identify its cause,¹⁵⁵ but believes the introduction of carbon dioxide into the system will reduce the amount of scale that is forming in the customers' houses.¹⁵⁶

4. Missouri-American indicates it is working with customers to assess the damages that have resulted from the water quality problems.¹⁵⁷

Conclusions of Law:

A. Section 393.130.1, RSMo (Cum. Supp. 2013) requires Missouri-American to provide safe and adequate water to its customers.

B. Section 393.140(2), RSMo 2000 gives the Commission authority to investigate the quality of the water supplied by Missouri-American.

C. Section 386.230, RSMo 2000 gives the Commission authority to act as an arbitrator in any controversy between a public utility and another party. However, such arbitration is voluntary and all parties to the controversy must agree in writing to the arbitration.

D. The Missouri Supreme Court has held:

[t]he Public Service Commission is an administrative body only, and not a court, and hence the commission has no power to exercise or perform a judicial function, or to promulgate an order requiring a pecuniary reparation or refund. The commission has no power to declare or enforce any principle of law or equity and as a result it cannot determine damages or award pecuniary relief.¹⁵⁸

¹⁵⁴ Dunn Surrebuttal, Ex. MAWC-6, Page 14, Lines 1-5.

¹⁵⁵ Transcript, Page 122, Lines 6-15.

¹⁵⁶ Dunn Surrebuttal, Ex. MAWC-6, Page 13, Lines 6-22.

¹⁵⁷ Transcript, Page 125, Lines 8-17.

¹⁵⁸ *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668-669 (Mo. 1950) (citations omitted).

Decision:

The Commission is concerned about the quality of the water Missouri-American delivers to some of its customers in Platte County. In its reply brief, the City of Riverside asks the Commission to order Missouri-American to agree to:

- 1) Enter into arbitration proceedings pursuant to Section 386.230, RSMo;
- 2) Establish a new case for each and every customer who has suffered damages as a result of this problem so that the customers can bring evidence of their damages before the Commission and the Commission can award adequate compensation to the customers; or
- 3) Reduce rates to the level established in the tariff of 2008, when this problem was first reported to Missouri-American, until all customers who have suffered damages are compensated and the quality of water is restored.

The Commission has no authority to force Missouri-American into an arbitration proceeding and it has no authority to determine or award damages to Missouri-American's customers. As a result, it cannot take the steps requested by the City of Riverside. However, the Commission will direct Missouri-American to prepare a report describing the resolution of the problems experienced by its customers in Platte County. Missouri-American shall file that report in this case no later than 90 days after the effective date of this Report and Order.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Missouri-American Water Company on July 31, 2015, and assigned tariff numbers YW-2016-0026, YW-2016-0027, YW-2016-0028, YW-2016-0029, YW-2016-0030, YW-2016-0033, YS-2016-0031, YS-2016-0032, YS-2016-

0034, YS-2016-0035, YS-2016-0036, YS-2016-0037, YS-2016-0038, YS-2016-0039, and YS-2016-0040, are rejected.

2. Missouri-American Water Company is authorized to file tariffs sufficient to recover revenues as determined by the Commission and to otherwise comply with this order.

3. Missouri-American Water Company shall file a five-year capital expenditure plan with the Commission for review by January 31 of each year after the effective date of rates in this case. The required annual plans shall be filed in this case file until Missouri-American files its next general rate case, at which time they shall be filed in that new case file.

4. Missouri-American Water Company shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than July 6, 2016.

5. This report and order shall become effective on June 25, 2016.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and Coleman, CC., concur;
and certify compliance with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 26th day of May, 2016.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Water Rate Request of)
Hillcrest Utility Operating Company, Inc.) **File No. WR-2016-0064 et al.**

EXPENSE

§41. Employee's pension and welfare

The appropriate level of pay for corporate officers was above the "entry" level and below "experienced" level, so the Commission used the "mean" level.

§76. Matching revenue/expense/rate base

The Commission excluded from rate base certain expenses, or portions of expenses, incurred outside the test year.

RATES

§25. Former rates; extent of change

As to sewer service and water service, the Commission's authority to order a phase-in of new rates is uncertain.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Water Rate Request of)
Hillcrest Utility Operating Company, Inc.)

File No. WR-2016-0064 et al.

REPORT AND ORDER

Issue Date: July 12, 2016

Effective Date: August 11, 2016

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Water Rate Request of)
Hillcrest Utility Operating Company, Inc.) **File No. WR-2016-0064 et al.**

REPORT AND ORDER

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APPEARANCES

HILLCREST UTILITY OPERATING COMPANY, INC.:

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Cydney D. Mayfield, Deputy Counsel, PO Box 2230, Jefferson City, Missouri, 65102.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

A. Case Filing and Consolidation

On September 15, 2015, Hillcrest Utility Operating Company, Inc. (“Hillcrest”) filed a letter with the Missouri Public Service Commission (“Commission”) requesting that the Commission approve increases in its annual water and sewer operating revenues, which resulted in the Commission opening two cases, File Nos. WR-2016-0064 and SR-2016-0065. The case was initiated under Commission Rule 4 CSR 240-3.050, which describes the procedures by which small utilities, such as Hillcrest, may request increases in their overall annual operating revenues. On October 9, 2015, the Commission’s Staff filed a *Motion to Consolidate*, which requested that the Commission consolidate the two cases in the interests of administrative efficiency and economy of resources. The Commission granted the motion, consolidating both cases under File No. WR-2016-0064.

B. Test Period

The test period is a central component in the ratemaking process. Rates are usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.¹ From these four factors is calculated the “revenue requirement,” which, in the context of rate setting, is the amount of revenue ratepayers must generate to pay the costs of producing the utility service they receive while yielding a reasonable rate of return to the

¹ *State ex rel. Union Electric Company v. Public Service Comm’n*, 765 S.W.2d 618, 622 (Mo. App. 1988).

investors.² A historical test year is used because the past expenses of a utility can be used as a basis for determining what rate is reasonable to be charged in the future.³ Because Hillcrest's parent company acquired the water and sewer system in March 2015, Staff used a test period in this case of the four months ending July 31, 2015, with an update period through October 31, 2015, to annualize the available Hillcrest revenue and expense information and develop its revenue requirement recommendation in this case.

C. Local Public Hearing

On February 18, 2016, the Office of the Public Counsel requested that the Commission schedule a local public hearing to give Hillcrest's customers an opportunity to respond to the requested rate increase. The Commission conducted a local public hearing in Cape Girardeau, Missouri, on March 9, 2016.⁴

D. Disposition Agreements

On March 25, 2016, the Commission's Staff and Hillcrest filed *Company/Staff Partial Agreement Regarding Disposition of Small Water Company Revenue Increase Request* and *Company/Staff Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request*, including various attachments related to the disposition agreements (collectively, the "Agreement"). The Agreement was a partial resolution of Hillcrest's water and sewer rate requests but left unresolved certain other issues for which Staff and Hillcrest requested an evidentiary hearing. The Office of the Public Counsel objected to the Agreement, so the Agreement became a joint position statement of the

² *State ex rel. Capital City Water Co. v. Public Service Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. 1993).

³ See, *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 59 (Mo. banc 1979).

⁴ Transcript, Vol 1.

signatory parties, and all the issues addressed in the Agreement remained for determination after hearing.⁵

E. Evidentiary Hearing

The evidentiary hearing was held on May 19, 2016.⁶ During the hearing, the parties presented evidence relating to the unresolved issues previously identified by the parties.

F. Case Submission

During the evidentiary hearing held at the Commission's offices in Jefferson City, Missouri, the Commission admitted the testimony of eight witnesses and received twenty-seven exhibits into evidence. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on June 15, 2016, and the case was deemed submitted for the Commission's decision on that date.⁷

II. General Matters

A. General Findings of Fact

1. Hillcrest Utility Operating Company, Inc. ("Hillcrest"), which holds the utility assets, is wholly owned by Hillcrest Utility Holding Company, Inc., which is wholly owned by First Round CSWR, LLC, which is managed by Central States Water Resources, Inc.⁸ Hillcrest provides water and sewer service to approximately 218 residential customers, twenty apartment customers, and four commercial customers located in Cape Girardeau County, Missouri.⁹

⁵ Commission Rule 4 CSR 240-2.115(2)(D).

⁶ Transcript, Vols. 2 and 3.

⁷ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

⁸ Staff Ex. 6, Griffin Rebuttal, p. 8.

⁹ Hillcrest Ex. 1, Cox Direct, p. 4.

2. The Office of the Public Counsel (“Public Counsel”) is a party to this case pursuant to Section 386.710(2), RSMo¹⁰, and by Commission Rule 4 CSR 240-2.010(10).

3. The Staff of the Missouri Public Service Commission (“Staff”) is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 4 CSR 240-2.010(10).

4. In File No. WO-2014-0340, Hillcrest applied to the Commission for approval to acquire its water and sewer systems from Brandco Investments, LLC (“Brandco”). Hillcrest sought permission to acquire the water and sewer assets and to issue indebtedness and encumber those assets in order to fund the construction necessary to bring the systems into regulatory compliance. The Commission issued an order in that case on October 22, 2014, that approved a stipulation and agreement, which provided that Hillcrest should be authorized to acquire and operate the water and sewer systems owned by Brandco and imposed certain other financial conditions. Hillcrest closed on the transaction with Brandco on March 13, 2015.¹¹

5. The water and sewer systems were in a complete state of disrepair when Hillcrest acquired the utility assets of Brandco.¹²

6. Since May 2014, the Hillcrest subdivision wastewater treatment plant had been under multiple compliance and enforcement actions from both the Missouri Department of Natural Resources (“MDNR”) and the Missouri Attorney General. Many years of general plant neglect and lack of investment by Brandco resulted in numerous MDNR citations for discharging wastewater directly into a creek without treatment during rain events, failing to disinfect sanitary sewer waste before discharging it into the adjoining

¹⁰ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2000 and subsequently revised or supplemented.

¹¹ Hillcrest Ex. 1, Cox Direct, p. 7-8.

¹² Hillcrest Ex. 1, Cox Direct, p. 8.

stream, and failing to treat waste for nutrient removal before discharge. In addition, the existing lagoon berm system was in significant danger of structural failure due to slope erosion and a lack of maintenance with the slope vegetation.¹³

7. MDNR issued citations for numerous regulatory violations for the Brandco drinking water system in the Hillcrest subdivision. Beginning in May 2014, the subdivision was put on an eight-week boil order due to positive E. coli test results in the water system.¹⁴

8. Before Hillcrest purchased the water and sewer systems, it entered into an agreement with MDNR that provided a means for the subdivision residents to receive water service. As part of this MDNR agreement, Hillcrest paid for emergency drinking water repairs, on-going drinking water system inspections, and a temporary chlorine disinfection system to protect subdivision residents.¹⁵

9. Hillcrest entered into a consent agreement with MDNR that required it to immediately make necessary improvements to the Hillcrest subdivision wastewater and drinking water systems.¹⁶

10. Hillcrest began construction on the drinking water and wastewater improvements approximately 30 days after it acquired those systems and completed the improvements in the fall of 2015. Hillcrest has invested approximately \$1,205,000 in the improved facilities.¹⁷

11. The Hillcrest water and sewer systems have not had a rate increase since April 9, 1989, and the cost of service has increased dramatically since that time.¹⁸

¹³ Hillcrest Ex. 1, Cox Direct, p. 8-9.

¹⁴ Hillcrest Ex. 1, Cox Direct, p. 9-10.

¹⁵ Hillcrest Ex. 1, Cox Direct, p. 11, Schedule JC-3..

¹⁶ Hillcrest Ex. 1, Cox Direct, p. 12, Schedule JC-3.

¹⁷ Hillcrest Ex. 1, Cox Direct, p. 12-13.

¹⁸ Staff Ex. 8, Harrison Direct, p. 4.

12. In its original rate request letter, Hillcrest set forth its request for an increase of \$236,016 in its total annual water service operating revenues and \$216,663 in its total annual sewer service operating revenues.¹⁹

13. Because Hillcrest's parent company acquired the water and sewer system in March 2015, Staff used a test period in this case of the four months ending July 31, 2015, with an update period through October 31, 2015, to annualize the available Hillcrest revenue and expense information and develop its revenue requirement recommendation in this case.²⁰

14. On March 25, 2016, the Commission's Staff and Hillcrest filed *Company/Staff Partial Agreement Regarding Disposition of Small Water Company Revenue Increase Request* and *Company/Staff Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request*, including various attachments related to the disposition agreements (collectively, the "Agreement"). The Agreement was a partial resolution of Hillcrest's water and sewer rate requests but left unresolved certain other issues for which Staff and Hillcrest requested an evidentiary hearing. Since Public Counsel objected to the Agreement, it is a joint position statement, but Staff and Hillcrest urge the Commission to adopt its terms. Public Counsel only objected to the disputed issues addressed at the evidentiary hearing. The Agreement is attached hereto as Attachment A and incorporated herein by reference as if fully set forth.²¹

15. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based

¹⁹ Staff Ex. 1, Bolin Direct, Schedule KKB-d2, p. 1, 7.

²⁰ Staff Ex. 8, Harrison Direct, p. 3.

²¹ Staff Ex. 1, Bolin Direct, p. 2-3; Schedule KKB-d2.

upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.²²

16. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.²³

B. General Conclusions of Law

Hillcrest is a “water corporation”, a “sewer corporation”, and a “public utility” as defined in Sections 386.020(59), 386.020(49), and 386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission’s subject matter jurisdiction over Hillcrest’s rate increase request is established under Section 393.150, RSMo.

Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party

²² Witness credibility is solely a matter for the fact-finder, “which is free to believe none, part, or all of the testimony”. *State ex rel. Public Counsel v. Missouri Public Service Comm’n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

²³ An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm’n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

requesting the rate increase, Hillcrest bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Hillcrest must meet the preponderance of the evidence standard.²⁴ In order to meet this standard, Hillcrest must convince the Commission it is “more likely than not” that Hillcrest’s proposed rate increase is just and reasonable.²⁵

In determining whether the rates proposed by Hillcrest are just and reasonable, the Commission must balance the interests of the investor and the consumer.²⁶ In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.²⁷

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure

²⁴ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

²⁵ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

²⁶ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

²⁷ *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.²⁸

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.²⁹

In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.³⁰

Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’ ... Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.³¹

²⁸ *Bluefield*, at 692-93.

²⁹ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

³⁰ *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

³¹ *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

Hillcrest and Staff signed and filed the Agreement, in which those parties reached agreement on most of the issues related to Hillcrest's rate increase requests. Public Counsel objected, but only as to the disputed issues that were addressed at the evidentiary hearing. Based on the evidence in this case, the Commission concludes that acceptance of the provisions of the Agreement on the issues contained therein, other than those issues disputed at the evidentiary hearing, is a fair and reasonable resolution of those issues. The Commission will adopt the provisions of the Agreement, other than those issues disputed at the evidentiary hearing, as stated in Attachment A to this Report and Order.

III. Disputed Issues

A. Payroll

- **What level of experience should be used to set the labor expense associated with each employee?**
- **Should the Employment Cost Index inflation rates be applied in setting such amounts?**
- **What is the appropriate number of annual work hours to include in calculating salaries for each employee?**
- **What is the appropriate hourly rate for each employee?**
- **What are the appropriate job titles to use in MERIC to compare and determine labor expense associated with Mr. Josiah Cox and Mr. Jack Chalfant?**

Findings of Fact

1. Hillcrest has no employees. Several functions related to the operation of Hillcrest are provided by three employees of First Round CSWR, LLC ("First Round") – a chief executive officer, a financial manager, and an administrative employee. A portion of the costs associated with those employees is then allocated to Hillcrest.³²

2. The Missouri Economic Research and Information Center ("MERIC") is the research division for the Missouri Department of Economic Development. It provides

³² Transcript, Vol. 2, p. 96; Hillcrest Ex. 1, Cox Direct, p. 14.

analysis and assistance to policymakers and the public, including studies of the state's targeted industries and economic development initiative.³³

3. Staff developed the corporate payroll compensation for ratemaking purposes in this case by using MERIC data for the St. Louis region to compare regional base salaries to the base salary amounts sought by Hillcrest in this case for the three First Round employees.³⁴

4. The MERIC system provides three levels of wage estimates for each occupation. Those levels are "entry level", "mean level", and "experienced level". The entry level is the beginning level of each occupational study and is at the lowest pay level. The mean level is the mid-range of the pay scale and is an estimate of the hourly rate, which is calculated using the varying hourly rates of a group of workers in a specific occupation. The experienced level is at the top end of the scale, which are the highest paid employees in each occupation.³⁵

5. Hillcrest and Public Counsel do not disagree with the general approach of using MERIC data to establish labor costs for ratemaking purposes.³⁶

6. Hillcrest requests that the Commission use MERIC salaries for purposes of establishing the revenue requirement in this case corresponding to Experience Chief Executive for Mr. Josiah Cox, Experience Financial Manager for Mr. Jack Chalfant, and Experience Executive Administrative for Ms. Brenda Eaves, updated and adjusted for

³³ Staff Ex. 8, Harrison Direct, p. 5.

³⁴ Staff Ex. 8, Harrison Direct, p. 5.

³⁵ Staff Ex. 8, Harrison Direct, p. 5-6.

³⁶ Hillcrest Ex. 1, Cox Direct, p. 15; OPC Ex. 1, Roth Direct, p. 6.

inflation to the most recent reporting period of the Employment Cost Index for the U.S. Bureau of Labor Statistics.³⁷

7. In determining the annual amount of payroll for the three employees, Staff used the mean level of the MERIC occupational study to annualize the payroll. At the time Staff developed the cost of service for Hillcrest, all three First Round employees had a year of experience or less operating and running a regulated utility, and the company was just beginning to establish itself as a regulated utility.³⁸

8. All three employees had significant work experience in their respective fields before starting work with First Round.³⁹

9. Understanding the uniform system of accounts for managing a utility is radically different than Generally Accepted Accounting Principles, and understanding the tariffs associated with a regulated utility requires a specialized level of knowledge.⁴⁰

10. The data that Staff used for MERIC was taken from calendar year 2014. At the end of the update period in this case, this data was less than one year old.⁴¹

11. Hillcrest's parent company has already acquired three water and sewer systems and is planning to purchase more troubled systems, which will require the hiring of more employees to maintain the operations of Hillcrest and the other acquired utilities.⁴²

12. Staff was unable to calculate the number of annual work hours in determining the appropriate salaries for Mr. Chalfant and Ms. Eaves because they did not keep timesheets prior to November 2015.⁴³ Staff determined annual hours for Mr. Cox based on

³⁷ Hillcrest Ex. 1, Cox Direct, p. 17-18.

³⁸ Staff Ex. 8, Harrison Direct, p. 6; Transcript, Vol. 2, p. 96.

³⁹ Hillcrest Ex. 1, Cox Direct, p. 16-17.

⁴⁰ Transcript, Vol. 2, p. 95-96.

⁴¹ Staff Ex. 9, Harrison Rebuttal, p. 4.

⁴² Staff Ex. 9, Harrison Rebuttal, p. 2.

⁴³ Hillcrest Ex. 2, Cox Rebuttal, p. 13.

his timesheets, but Staff did not include those hours worked prior to the acquisition date of March 13, 2015, in annualized payroll expense. Those hours prior to March 13, 2015, were capitalized into plant in service and included as part of Hillcrest's rate base.⁴⁴

13. Hillcrest uses the titles of President and Chief Financial Officer for Mr. Cox and Mr. Chalfant, respectively.⁴⁵

Conclusions of Law and Decision

The Commission finds that Staff's approach to resolving all the payroll issues is the most reasonable. It was appropriate for Staff to select the "mean" experience level in using the MERIC data to establish labor expenses for each employee. Those employees have significant prior professional experience, so they should not be categorized as "entry." However, Mr. Cox admitted at the hearing that a utility's uniform system of accounts and regulated utility tariffs require specialized understanding beyond general business practices. Since all three employees had a year or less in working for a regulated utility, the "experienced" level is also not appropriate.

The Employment Cost Index inflation rates should not be applied in setting the labor costs in this case. The data that Staff used for MERIC was taken from calendar year 2014, so at the end of the update period in this case the data was less than one year old. Adjusting salaries for inflation is not necessary, and granting this unusual treatment would further increase rates, with little justification, that are already increasing significantly. In calculating salaries for each employee, the annual work hours determined by Staff should be used for Mr. Cox, based on his timesheets. Since Mr. Chalfant and Ms. Eaves did not keep time sheets during the test period, 14% of those two employees' annualized salaries

⁴⁴ Staff Ex. 9, Harrison Rebuttal, p. 3.

⁴⁵ Hillcrest Ex. 1, Cox Direct, p. 16-17; Staff Ex. 8, Harrison Direct, p. 4-5.

should be used.⁴⁶ The appropriate hourly rate for each employee should be those rates calculated by Staff based on its positions on the above issues.

The appropriate job titles to use in MERIC to determine labor expense for Mr. Cox and Mr. Chalfant are President and Chief Financial Officer, respectively. These are the titles presently used by Hillcrest to describe those two employees, and Staff's comparison of their job duties to MERIC found that these titles should continue to be used for ratemaking purposes. Since Hillcrest is part of a group of commonly-owned regulated utilities and has plans to acquire additional utilities, it is appropriate to assign employee titles similar to larger utilities rather than single utility companies.

B. Property Taxes

- **What is the appropriate amount of property taxes to include in the Hillcrest revenue requirements?**
- **Should estimated property tax amounts be included in rates?**

Findings of Fact

1. Property taxes are computed using assessed property values. Utilities are required to file with the taxing authorities a valuation of their utility property at the first of each year based on the January 1 assessment date. Several months later, the taxing authorities provide the utility with what they refer to as an "assessed value" for each category of property owned. Much later in the year (typically in the fall) the utilities are given the property tax rate. Property tax bills are then issued to the utilities with due dates of December 31 for each year based on the property tax rates applied to assessed value. For

⁴⁶ 14% refers to the corporate allocation percentage the Commission determines on page 33 below to be appropriate to apply to corporate costs for Hillcrest.

example, a utility will pay property taxes on December 31, 2015, based upon an assessment made of its asset values as of January 1, 2015.⁴⁷

2. Staff included \$164 for water and \$164 for sewer in the cost of service for property tax expense, based on Hillcrest's actual taxes paid as of December 31, 2015. This amount included Hillcrest's property taxes paid to Cape Girardeau County and Hillcrest's 14% share of First Round's St. Louis County property taxes, combined and allocated equally between Hillcrest's water and sewer operations.⁴⁸

3. The actual property taxes paid as of December 31, 2015, best matches the test period in this case, which ended October 31, 2015.⁴⁹

4. The term "matching principle" refers to the practice that all elements of the revenue requirement, including revenues, expenses, and rate base, be measured and included in the utility's cost of service at the same general point in time. It is very important that all elements of the revenue requirement be considered at a consistent point in time because various events cause changes to a utility's revenues, expenses, and rate base amounts, individually or in combination, causing the utility's overall revenue requirement to change over time. Reflecting changes to only one element of the revenue requirement in rates, in this case property taxes, without consideration of all other possible offsetting changes in the other cost of service components, would likely lead to a distorted and inaccurate level of customer rates.⁵⁰

5. Plant additions and improvements made by Hillcrest between April 1, 2015, and October 31, 2015, would not be assessed for property tax purposes until January 1,

⁴⁷ Staff Ex. 11, Sarver Direct, p. 3.

⁴⁸ Staff Ex. 11, Sarver Direct, p. 4-5.

⁴⁹ Staff Ex. 11, Sarver Direct, p. 5.

⁵⁰ Staff Ex. 11, Sarver Direct, p. 6.

2016, and will not be paid until December 31, 2016, which is fourteen months beyond the update period in this case.⁵¹

6. Hillcrest has requested that the amount of \$2,972 be included in its cost of service for property tax. This amount has not yet been paid, is an estimate of the property tax costs, and could change during the summer of 2016.⁵²

Conclusions of Law and Decision

Hillcrest has proposed that estimated property taxes in the amount of \$2,972 be included in its cost of service in this case. That estimated property tax will not be paid until approximately December 31, 2016, so it is beyond the test and update periods for this case. Since it occurs after the update period, to be included in Hillcrest's cost of service the expense must have been realized (known) and must be calculable with a high degree of accuracy (measurable).⁵³ However, the evidence shows that the 2016 property tax amount has not yet been paid, is an estimate of the property tax costs, and could change during the summer of 2016. Therefore, that property tax estimate is not known and measurable, so it is inappropriate to include that amount in the revenue requirement for this case. The correct property tax expenses to include in Hillcrest's cost of service are the amounts determined by Staff based on actual property tax paid in 2015, as those amounts are consistent with the matching principle.

In its initial brief, Hillcrest requested for the first time in this case that if it does not receive the \$2,972 in its revenue requirement, the Commission should authorize a refundable surcharge or a tracker for property taxes. Since this request was first submitted

⁵¹ Staff Ex. 11, Sarver Direct, p. 6.

⁵² Hillcrest Ex. 2, Cox Rebuttal, p. 20-21; Staff Ex. 11, Sarver Direct, p. 5.

⁵³ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service*, ER-2014-0370, 2015 WL 5244724, at *71 (Sept. 2, 2015). *State ex rel. GTE North, Inc. v. Missouri Public Service Commission*, 835 S.W. 2d 356, 368 (Mo App. 1992).

in a brief, it violates Commission Rule 4 CSR 240-2.130(7)(A), which requires that “[d]irect testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief.” By submitting the request for the first time after the close of evidence, Hillcrest has prevented other parties from having a sufficient opportunity to conduct discovery or provide testimony on that matter. In addition, a tracker is a type of deferral accounting to defer costs which may be incurred in the future for “extraordinary items,” as defined in the Uniform System of Accounts.⁵⁴ The Commission concludes that Hillcrest has not met its burden of proof to demonstrate that projected property taxes are extraordinary. For all these reasons, the Commission concludes that Hillcrest’s request for a refundable surcharge or a tracker should be denied. Hillcrest’s 2016 property tax may be eligible for inclusion in its cost of service in a future rate case.

⁵⁴ “Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.” 18 C.F.R. § Pt. 101, General Instruction No. 7; See also, Report and Order, ER-2012-0174, *In the Matter of Kansas City Power & Light Company’s Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv. & in the Matter of KCP&L Greater Missouri Operations Company’s Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv.*, 2013 WL 299322 (Jan. 9, 2013); Report and Order, *In the Matter of the Application of S. Union Co. for the Issuance of an Accounting Auth. Order Relating to Its Natural Gas Operations & for A Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, GU-2011-0392, 2012 WL 363727 (Jan. 25, 2012).

C. Auditing and Income Tax Preparation Fees

- What is the appropriate amount of Hillcrest's auditing and tax preparation (accounting) costs to include in Hillcrest's cost of service?
- What is the appropriate allocated level of auditing and tax preparation (accounting) costs for Central States Water Resources to include in Hillcrest's cost of service?
- Should accounting costs incurred and paid in 2016 by Hillcrest be included in Hillcrest's cost of service?

Findings of Fact

1. Hillcrest issued requests for proposals to a variety of accountants and accounting firms in order to determine the least expensive qualified firm for auditing and tax preparation services for Hillcrest and its parent company. Hillcrest hired the firm with the lowest qualified costs. Hillcrest is requesting that its share of those bid amounts be included in its revenue requirement in this case.⁵⁵

2. The bid that Hillcrest received for auditing and tax preparation services is only an estimate of the expected cost of those services.⁵⁶ Those fees have not yet been paid.⁵⁷

3. Staff determined costs for auditing and tax preparation services by using actual costs of the parent company in 2015 and allocating 14% of that amount to Hillcrest.⁵⁸ Staff calculated that Hillcrest's share of the costs was approximately \$326, divided equally between water and sewer operations.⁵⁹

Conclusions of Law and Decision

Hillcrest requests that an estimate of its auditing and tax preparation fees to be paid in 2016 be included in the revenue requirement for this case. Those costs would occur

⁵⁵ Hillcrest Ex. 1, Cox Direct, p. 20-21.

⁵⁶ Staff Ex. 8, Harrison Direct, p. 9.

⁵⁷ Transcript, Vol. 2, p. 98.

⁵⁸ 14% refers to the corporate allocation percentage the Commission determines on page 33 below to be appropriate to apply to corporate costs for Hillcrest.

⁵⁹ Staff Ex. 8, Harrison Direct, p. 8-9.

outside of the test and update periods, which would violate the matching principle. Hillcrest has not met its burden of proof to demonstrate that the costs are both known and measurable, as the evidence shows they have not yet been paid and are only an estimate of those costs. The Commission concludes that any accounting costs incurred and paid in 2016 by Hillcrest should not be included in Hillcrest's cost of service for this case. The appropriate amount of auditing and tax preparation costs to include in Hillcrest's cost of service is the allocated amount of \$326, divided equally between water and sewer operations, as determined by Staff to have actually been paid in 2015.

D. Rate of Return

- **What is the appropriate capital structure for purposes of setting Hillcrest's allowed rate of return?**
- **What is the appropriate allowed return on equity to apply to the equity in the ratemaking capital structure?**
- **What is the appropriate allowed debt rate to apply to the debt in the ratemaking capital structure?**

Findings of Fact

1. An essential ingredient of the cost-of-service ratemaking formula is the rate of return, which is premised on the goal of allowing a utility the opportunity to recover the costs required to secure debt and equity financing. If the allowed rate of return is based on the costs to acquire capital, then it is synonymous with the utility's weighted average cost of capital, which is calculated by multiplying each component ratio of the appropriate capital structure by its cost and then summing the results. In order to arrive at a rate of return, the Commission must examine an appropriate ratemaking capital structure, Hillcrest's cost of debt, and Hillcrest's cost of common equity, or return on equity.⁶⁰

⁶⁰ Staff Ex. 4, Griffin Direct, Schedule SG-d2, p. 6-8.

2. As of September 2015, Hillcrest's actual capital structure was 19% equity and 81% debt.⁶¹

3. Staff recommended a hypothetical capital structure for Hillcrest consisting of 25% equity and 75% debt.⁶²

4. Staff calculated a return on equity ("ROE") for Hillcrest by taking the projected yield on long-term public utility bonds that would be assigned to a three-month average of debt with a B rating and adding a 4% risk premium to that amount. Taking into consideration the change in spread for corporate bond yields in the early part of 2016, Staff determined an appropriate ROE range of 12.88% to 14.13% for Hillcrest.⁶³

5. Hillcrest agrees that the ROE range determined by Staff is reasonable.⁶⁴ Public Counsel did not take a position on an appropriate ROE.

6. Mr. Cox testified credibly that prior to filing the first asset acquisition and financing case with the Commission, he met with over fifty specialized infrastructure institutional investors, private equity investors, investment bankers, and commercial banks on behalf of Hillcrest and its parent company in an attempt to create a program to build water and wastewater improvements to support distressed small water and sewer utilities in Missouri.⁶⁵ His attempts to secure debt and equity financing from traditional lending sources were unsuccessful.⁶⁶

7. In general, small distressed water and sewer systems are shut off from traditional capital markets because of potential liability associated with existing health and

⁶¹ Hillcrest Ex. 2, Cox Rebuttal, p. 21; Transcript, Vol. 2, p. 44.

⁶² Staff Ex. 4, Griffin Direct, p. 2.

⁶³ Staff Ex. 4, Griffin Direct, p. 7-9.

⁶⁴ Hillcrest Ex. 2, Cox Rebuttal, p. 21-22.

⁶⁵ Hillcrest Ex. 1, Cox Direct, p. 24; Transcript, Vol. 2, p. 51.

⁶⁶ Hillcrest Ex. 1, Cox Direct, p. 27.

environmental compliance failures, lack of professional management, and a complex regulatory system.⁶⁷

8. Mr. Cox testified credibly that the best deal he could obtain to finance the necessary improvements to the Hillcrest water and sewer systems was a financing agreement dated March 6, 2015, with Fresh Start Venture LLC (“Fresh Start”) at an interest rate of 14%.⁶⁸

9. Fresh Start was originally formed in 2014 by a group of 12 equity investors and created specifically to provide financing for this investment opportunity pursuant to a contractual agreement.⁶⁹ In 2014, Fresh Start obtained a 33% ownership interest in First Round and a financing agreement at an interest rate of 14%.⁷⁰

10. At some time prior to March 6, 2015, two new investors (“New Investors”) acquired 87% of the membership interest of First Round and all of Fresh Start.⁷¹

11. Staff recommended a cost of debt for Hillcrest within the range of 8.88% to 10.13%.⁷² Staff determined this proposed range by estimating a cost of debt based on junk bond debt yields from published indices that Staff believes would satisfy a hypothetical third-party debt investor’s market requirements.⁷³

12. Staff recommends a hypothetical cost of debt much lower than Hillcrest’s actual debt cost with Fresh Start because Staff does not know how the 14% debt cost was determined and suspects that the debt cost did not result from arms-length good faith

⁶⁷ Hillcrest Ex. 1, Cox Direct, p. 25-26.

⁶⁸ Transcript, Vol. 2, p. 114; Staff Ex. 4, Griffin Direct, p. 4; Staff Ex. 14.

⁶⁹ Staff Ex. 6, Griffin Rebuttal, p. 10.

⁷⁰ Staff Ex. 6, Griffin Rebuttal, p. 9.

⁷¹ Staff Ex. 6, Griffin Rebuttal, p. 9; Staff Ex. 13, p. 2; Staff Ex. 14, p. 28 and signature page.

⁷² Staff Ex. 4, Griffin Direct, p. 4.

⁷³ Staff Ex. 4, Griffin Direct, p. 4-7; Staff Ex. 6, Griffin Rebuttal, p. 5.

negotiations.⁷⁴ Staff is concerned about accepting 14% as a market-based cost of debt because it views the investment structure of Hillcrest and associated entities as complex, not transparent, and consisting of non-traditional affiliations between investors.⁷⁵ However, Staff has not alleged that Hillcrest's debt is imprudent.⁷⁶

13. The Fresh Start loan agreement specifically prohibits Hillcrest from issuing any additional debt, and the make whole premiums for any potential early retirement of the Fresh Start debt make it uneconomical to do so.⁷⁷

14. Public Counsel did not take a formal position on the appropriate cost of debt for Hillcrest.⁷⁸

Conclusions of Law and Decision

Capital structure

In determining the rate of return, the Commission must first consider Hillcrest's capital structure. The Commission concludes that in calculating Hillcrest's cost of capital and cost of debt, the appropriate capital structure to use is the actual capital structure of Hillcrest as of September 2015, which was 19% equity and 81% debt. In order to set a fair rate of return for Hillcrest, the Commission must determine the weighted cost of each component of the utility's capital structure.

⁷⁴ Staff Ex. 6, Griffin Rebuttal, p. 4.

⁷⁵ Staff Ex. 6, Griffin Rebuttal, p. 13.

⁷⁶ Transcript, Vol. 2, p. 178.

⁷⁷ Staff Ex. 6, Griffin Rebuttal, p. 15; Staff Ex. 14, p. 21, section 6.15.

⁷⁸ Public Counsel argues that Mr. Cox's testimony should not be believed regarding his efforts to secure financing. Public Counsel alleges that Mr. Cox improperly failed to disclose certain information to creditors in a previous personal bankruptcy proceeding. The Commission does not have the authority or expertise to make a legal conclusion about whether Mr. Cox violated bankruptcy laws, so declines to rely on that allegation in evaluating Mr. Cox's credibility.

Return on equity

One component at issue in this case is the estimated cost of common equity, or the return on equity. Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.⁷⁹ Determining a rate of return on equity is imprecise and involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.⁸⁰ Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.⁸¹ "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this commissions, in carrying out their functions, necessarily deal in what are called 'zones of reasonableness', the result of which is that they have some latitude in exercising this most difficult function."⁸² Moreover, the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.⁸³

The evidence shows that both Hillcrest and Staff agree that an ROE within the range of 12.88% to 14.13% would be a reasonable and accurate estimate of the current market cost of capital for Hillcrest. Based on the competent and substantial evidence in the record and on its balancing of the interests of the company's ratepayers and shareholders, the Commission concludes that 13.0% is a fair and reasonable return on equity for Hillcrest.

⁷⁹ See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).

⁸⁰ *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).

⁸¹ *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).

⁸² *Id.* In fact, for a court to find that the present rate results in confiscation of the company's private property, that court would have to make a finding based on evidence that the present rate is outside of the zone of reasonableness, and that its effects would be such that the company would suffer financial disarray. *Id.*

⁸³ *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009). See, *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness'").

Cost of debt

The other component of Hillcrest's capital structure in dispute in this case is the appropriate cost of debt. Hillcrest requests that the Commission utilize the debt cost of 14%, which is the actual interest rate Hillcrest is obligated to pay to Fresh Start under their financing agreement. Staff urges the Commission to reject the actual cost of debt and instead impute a hypothetical cost of debt to Hillcrest's capital structure. Staff is concerned about accepting 14% as a market-based cost of debt because it views the investment structure of Hillcrest and its associated entities as complex, not transparent, and consisting of non-traditional affiliations between investors. Staff recommends a hypothetical cost of debt much lower than Hillcrest's actual debt cost with Fresh Start because Staff does not know how the 14% debt cost was determined and suspects that the debt cost did not result from arms-length good faith negotiations. In addition, Staff alleges that Hillcrest has failed to sufficiently demonstrate that it sought the least-cost option available to it when obtaining financing, which was a condition in the stipulation and agreement signed by Hillcrest and approved by the Commission in Hillcrest's asset acquisition proceeding in File No. WO-2014-0340.

The Commission has the legal authority to impose for ratemaking purposes a lower cost of debt than a utility's actual debt cost.⁸⁴ However, Staff's arguments are not persuasive that a hypothetical debt cost should be imposed on Hillcrest in this case. Staff expressed suspicions that the financing agreement with Fresh Start was not an arms-length transaction but did not present sufficient evidence to support that allegation. The interest rate under the financing agreement did not change when the New Investors took over

⁸⁴ *State ex rel. U.S. Water/Lexington v. Missouri Public Service Commission*, 795 S.W.2d 593, 597 (Mo. App. 1990).

Fresh Start and acquired the majority ownership interest in First Round, but there is not enough information in the record concerning the circumstances surrounding that transaction to reach the conclusion that the transaction was not in good faith. While the Commission expects Hillcrest to be responsive to Staff's appropriate requests for information, the company should not be penalized because it chooses to utilize a complex or non-traditional investment structure for its own business purposes. With regard to Hillcrest's compliance with the condition in the stipulation and agreement in File No. WO-2014-0340, Staff did not present evidence that Hillcrest failed to seek a lower-cost financing arrangement. On the contrary, Mr. Cox testified credibly that he made significant efforts, although unsuccessful, to obtain financing from more traditional commercial banks and financial institutions. The Commission concludes that Hillcrest has met its burden of proof to demonstrate that it sought the least-cost financing option available to it.

The Commission is very concerned about the effect dramatically increasing water and sewer rates will have on Hillcrest's customers. However, as stated in the *Bluefield* Supreme Court case, in setting just and reasonable rates the Commission must provide a return to the utility that is "reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties".⁸⁵ It is important that utility companies be able to attract sufficient capital to meet their financial obligations and provide adequate service to their customers. Hillcrest acquired these systems when they were in a complete state of disrepair, and the company had to find funds to immediately make necessary improvements to protect the health of its customers and to satisfy MDNR and the Missouri

⁸⁵ *Bluefield*, at 692-93.

Attorney General. The evidence shows that after diligent efforts to obtain financing from a variety of potential lenders, the only financing available to Hillcrest at that time was the transaction with Fresh Start. Penalizing Hillcrest now for that decision would be unfair and may discourage other companies from acquiring and improving troubled water and sewer utilities in the future, which would be contrary to good public policy. The Commission concludes that the appropriate allowed debt rate to apply to the debt in the ratemaking capital structure is the actual debt cost of 14%.

E. Rate Design

- **How many classes should Hillcrest's customers be divided into for the purposes of designing rates for both water and sewer?**
- **What are the proper allocation percentages to be used to allocate expenses between the customer charge and volumetric rate?**
- **Should a rate increase be implemented all at once or phased-in over time?**

Findings of Fact

1. Hillcrest provides water and sewer service to residential, apartment, and commercial customers.⁸⁶ Currently, Hillcrest's sewer customers are divided into two rate classes, one for residential and commercial with a flat monthly customer charge of \$14.63 and another for apartments with a flat monthly charge of \$11.70. Its water customers currently have only one rate class with a customer charge of \$3.58 per month and a commodity fee of \$1.84 per 1,000 gallons used.⁸⁷ These rates have been unchanged since 1989.⁸⁸

⁸⁶ OPC Ex. 5, Russo Direct, p. 3-4.

⁸⁷ Staff Ex. 2, Robertson Direct, p. 6-7.

⁸⁸ Hillcrest Ex. 1, Cox Direct, p. 13.

2. Public Counsel has proposed to change Hillcrest's rate design by creating three customer classifications for water and sewer service – residential, apartment, and commercial classes.⁸⁹ Hillcrest and Staff do not object to this proposal.⁹⁰

3. The customer charge is the amount charged to customers each month regardless of the amount of water used. The monthly minimum customer charge includes the costs that remain relatively constant throughout the course of the year, including operating expenses and capital costs not directly associated with the production of water.⁹¹

4. The volumetric rate is the rate charged to customers based on the amount of water used by the customer at specifically-set intervals. The volumetric rate includes the operating and capital costs related to the production of water.⁹²

5. Public Counsel's witness James Russo testified credibly regarding the proper allocation percentages to be used to allocate expenses between the customer charge and volumetric rate for water service. Under Public Counsel's rate design, all costs are assigned directly as a customer charge or a volumetric rate or, alternatively, a representative portion of the costs are allocated by a percentage to either the customer charge or the volumetric rate based on the particular characteristics of the cost.⁹³ Neither Hillcrest nor Staff provided evidence in the record of the hearing regarding how expenses should be assigned between the fixed customer charge and volumetric rate.

6. The water and sewer rates for Hillcrest customers will be raised dramatically under the proposals offered by the parties in this case.⁹⁴

⁸⁹ OPC Ex. 5, Russo Direct, p. 6.

⁹⁰ Hillcrest Ex. 2, Cox Rebuttal, p. 2; Staff Ex. 3, Robertson Rebuttal, p. 4.

⁹¹ OPC Ex. 5, Russo Direct, p. 5.

⁹² OPC Ex. 5, Russo Direct, p. 5.

⁹³ OPC Ex. 5, Russo Direct, p. 6-8 and included Schedules.

⁹⁴ OPC Ex. 5, Russo Direct, p. 12-14.

7. Both Staff and Public Counsel have proposed alternative rate design plans to phase-in increased utility rates over a period of time in an effort to mitigate the rate shock attributed to high rates.⁹⁵

8. The rate phase-in plans would not provide Hillcrest with sufficient cash to pay its operations costs and would cause Hillcrest to default on its debt service payments in the first year of operations under the new rate.⁹⁶

9. Under the rate phase-in proposals, the carrying costs associated with the booking of those deferred revenues means that, in the end, the customers would pay more out of their pockets than they would in the absence of a phase-in, all else being equal.⁹⁷

Conclusions of Law and Decision

Public Counsel has proposed to change Hillcrest's rate design by creating three customer classifications for water and sewer service – residential, apartment, and commercial classes, and Hillcrest and Staff do not object to this proposal. The Commission agrees that the rate design should be changed to include the three customer classifications as proposed.

Public Counsel's witness James Russo provided the only evidence regarding the proper allocation percentages to be used to allocate expenses between the customer charge and volumetric rate for water service. The Commission concludes that the proper allocation percentages and methodologies to be used for this purpose are those described in James Russo's direct testimony.

Staff and Public Counsel have both proposed alternate rate design plans that provide a rate phase-in to help mitigate rate shock for Hillcrest's ratepayers. "[T]he Public

⁹⁵ Staff Ex. 2, Robertson Direct, p. 8-9; OPC Ex. 5, Russo Direct, p. 14-15, Schedule 12.

⁹⁶ Hillcrest Ex. 2, Cox Rebuttal, p. 8-10.

⁹⁷ Hillcrest Ex. 2, Cox Rebuttal, p. 10-11.

Service Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto.”⁹⁸ As the Commission is an administrative agency with limited jurisdiction, “the lawfulness of its actions depends directly on whether it has statutory power and authority to act.”⁹⁹ Accordingly, the Commission does not have the legal authority to order a phase-in of rates unless it has been given such authority by the General Assembly of this state. Section 393.155, RSMo, authorizes the Commission to phase-in rate increases over time under certain circumstances, but that authority is only provided with regard to electrical corporations. The statute does not give express authority for a rate phase-in for other types of utilities, such as water or sewer companies. The statutory authority for the Commission to order a rate phase-in for Hillcrest in this case is uncertain.

Moreover, the evidence shows that the rate phase-in plans would not provide Hillcrest with sufficient cash to pay its operations costs; would cause Hillcrest to default on its debt service payments in the first year of operations under the new rate, and would, in the end, cost the ratepayers more than not using a phase-in. The Commission finds that the two phase-in plans are not in the best interests of either Hillcrest or the ratepayers. The Commission concludes that any rate increase should be implemented all at once and not phased-in over time.

F. Corporate Allocation

- **What is the appropriate corporate allocation percentage to apply to corporate costs?**

⁹⁸ *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

⁹⁹ *State ex rel. Gulf Transp. Co. v. Public Service Commission*, 658 S.W.2d 448, 452 (Mo. App. 1983).

Findings of Fact

1. Hillcrest has requested that the Commission allocate 14% of the corporate costs of the parent company to it for ratemaking purposes. Hillcrest's proposed allocation of 14% represents the percentage of work time the company believes will be required of its employees in the future taking into consideration the completion of additional acquisitions of water and sewer companies.¹⁰⁰

2. In addition to Hillcrest, First Round owns and operates Raccoon Creek Utility Operating Company, Inc. and Indian Hills Utility Operating Company, Inc., with approximately 500 and 700 customers, respectively.¹⁰¹ Based on total existing customers for the three companies that First Round currently operates, Hillcrest customers represent over 28% of the current total customer base.¹⁰² First Round has contracts to acquire two additional water or sewer utilities.¹⁰³

3. Staff determined a 14% corporate cost allocation factor based on the number of customers in Hillcrest compared to the number of customers in utilities acquired by First Round and utilities that are planned to be acquired.¹⁰⁴

4. Public Counsel proposed a corporate cost allocation factor of 10.49% based on a review of Mr. Cox's time sheets from March 13, 2015 through October 31, 2015.¹⁰⁵ Public Counsel did not use the time sheets of Mr. Chalfant and Ms. Eaves in calculating an allocation factor because those two employees did not begin recording their time until after October 31, 2015.¹⁰⁶ If Public Counsel had taken the time sheets for operational duties of

¹⁰⁰ Hillcrest Ex. 1, Cox Direct, p. 15; Hillcrest Ex. 2, Cox Rebuttal, p. 13.

¹⁰¹ OPC Ex. 1, Roth Direct, p. 2-3.

¹⁰² Transcript, Vol. 2, p. 198.

¹⁰³ Transcript, Vol. 2, p. 112-113.

¹⁰⁴ Staff Ex. 8, Harrison Direct, p. 7.

¹⁰⁵ OPC Ex. 3, Roth Rebuttal, p. 2; OPC Ex. 4, Roth Rebuttal Schedule KNR-1; Hillcrest Ex. 3.

¹⁰⁶ OPC Ex. 3, Roth Rebuttal, p. 2.

those two employees recorded after October 31, 2015 into consideration, the Hillcrest allocation percentage would be closer to 21%.¹⁰⁷

5. When Public Counsel calculated its allocation factor by using Mr. Cox's time sheets, it only used those hours found in the "HC," or Hillcrest, column to determine work associated with Hillcrest and considered all other hours as "non-regulated."¹⁰⁸

6. Mr. Cox testified credibly that on his time sheets, regulated work related to Hillcrest is also included in columns besides the "HC" column used by Public Counsel to calculate an allocation factor.¹⁰⁹

Conclusions of Law and Decision

Of the three methods proposed for calculating the corporate cost allocation factor, the Commission finds that Staff's method is the most reliable and reasonable. Hillcrest did not present sufficient evidence of how it determined its allocation factor based on employee time sheets. Public Counsel's proposed allocation factor is unreasonably low because it completely disregarded the work time of Mr. Chalfant and Ms. Eaves and only included a portion of Mr. Cox's work time related to Hillcrest.

Public Counsel's criticism of Staff's method as being based on estimated, future costs, and not known and measurable, is not applicable in this situation. The allocation factor is not an expense that occurs outside of the test year but rather a method of allocating corporate costs that occur within the test year. The Commission concludes that the appropriate corporate allocation percentage to apply to corporate costs is 14%.

¹⁰⁷ Hillcrest Ex. 2, Cox Rebuttal, p. 14.

¹⁰⁸ OPC Ex. 4, Roth Rebuttal Schedule KNR-1; Hillcrest Ex. 3.

¹⁰⁹ Transcript, Vol. 2, p. 132-136.

Decision Summary

In making this decision as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence but indicates rather that the material was not dispositive of this decision.

Hillcrest provides safe and adequate service, and the Commission concludes, based upon its independent review of the whole record, that the rates approved as a result of this order support the provision of safe and adequate service. The revenue increase approved by the Commission is no more than what is sufficient to keep Hillcrest's utility plants in proper repair for effective public service and provide to Hillcrest's investors an opportunity to earn a reasonable return upon funds invested.

THE COMMISSION ORDERS THAT:

1. The Commission adopts the provisions, other than those issues disputed at the evidentiary hearing, of the *Company/Staff Partial Agreement Regarding Disposition of Small Water Company Revenue Increase Request* and *Company/Staff Partial Agreement Regarding Disposition of Small Sewer Company Revenue Increase Request* filed on March 25, 2016, including attachments. The signatories are ordered to comply with the terms of these partial disposition agreements, which are attached hereto as Attachment A and incorporated herein by reference as if fully set forth.

2. Hillcrest Utility Operating Company, Inc. is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order. Hillcrest Utility Operating Company, Inc. shall file its compliance tariff sheets no later than July 20, 2016.

3. Hillcrest Utility Operating Company, Inc. shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than July 20, 2016.

4. The Staff of the Missouri Public Service Commission shall file its recommendation concerning approval of Hillcrest Utility Operating Company, Inc.'s compliance tariff sheets no later than July 27, 2016.

5. Any other party wishing to respond or comment regarding Hillcrest Utility Operating Company, Inc.'s compliance tariff sheets shall file the response or comment no later than July 27, 2016.

6. This Report and Order shall become effective on August 11, 2016.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp,
and Coleman, CC., concur,
Stoll, C., dissents, with separate
dissenting opinion attached;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 12th day of July, 2016.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Water Rate	)	
Increase Request of	)	
Hillcrest Utility Operating	)	
Company, Inc.	)	
	)	
Consolidated with,	)	Case No. WR-2016-0064
	)	
In the Matter of the Sewer Rate	)	
Increase Request of	)	
Hillcrest Utility Operating	)	
Company, Inc.	)	

**DISSENTING OPINION OF
COMMISSIONER STEPHEN M. STOLL**

This Commissioner dissents from the majority in WR-2016-0064 for the following reasons:

This case involves a small water company acquired by new owners who took possession of the utility for the purpose of making a profit, well-aware of the risks associated with the enterprise and the serious disrepair of the plant of the utility at the time of the acquisition.

The repairs necessary to the plant of the utility, evidenced by repeated citations issued to the company by the Missouri Department of Natural Resources, required an investment of more than \$1.2 million.

The actual capital structure of the company, the ratio of equity-to-debt, is 19 percent equity to 81 percent debt. Ideally, the debt to equity ratio of an investor-owned utility is near a 50-50 balance. This company strays in remarkable degree from that ideal. Such variation is not uncommon in small water companies, but in this case extreme even in the context of the small water company classification.

In business, companies sell stock to raise capital through shares of ownership in the company and take on debt to finance operations. The reason that companies issue debt is because the defined interest cost of debt is cheaper than the diluted share cost of equity. If this were not the case, debt would not be incurred; only stock would be issued. Further, should the company be unable to meet its debt obligations and seek restructuring through bankruptcy, holders of the company's debt would have claim to the company's assets, while the value of the stock equity would become worthless.

It is in reversing this fundamental tenet between the cost of debt and the higher cost of equity that the majority of the Commission, in order in WR-2016-0064, errs and in doing so makes this Commissioner unable to support the order.

In this case, the staff of the Commission filed testimony setting a return-on-equity range of 12.28 percent to 14.3 percent. The owners of the company agreed with this range as an acceptable return on investment, while the Office of Public Counsel offered no testimony on this issue.

The majority of the Commission in this order has agreed to a low-end scale figure of 13 percent ROE – a rate, it should be noted, that will serve not as a guarantee, but a cap on earnings of the equity portion of the company’s capital structure. That structure for ratemaking purposes under the Commission’s order in this case constitutes only the actual 19 percent of the company’s total debt and equity sum.

In testimony before the Commission in this case witnesses for the company indicated financing for the repairs was sought from multiple sources, but was unable to be secured. The loan was continued – by a financial interest in the parent company – at the same rate of 14 percent. Staff raised questions about the transparency and arms-length – competitive – basis on which the loan was sought. At the same time, Office of Public Counsel raised questions about personal financial risks of the company’s owner that might have complicated the attempt to secure a more reasonable rate.

The effect of this Order saddles ratepayers with the entire interest components of the debt carried into the company by the existing loan. While recovery of the prudently incurred debt costs is entirely permissible in normal rate cases, the curious nature of this case involving an unusually high debt ratio – and the fact that an entity within the parent corporate structure is making the loan is problematic on several levels, any of which would preclude this Commissioner from supporting the Report and Order.

First, under the unusually skewed debt-to-equity ratio of 81 percent to 19 percent, the debtors of the company have a claim to assets of the company, should default occur, that minimizes the incentive of the equity holders to manage the company in the most prudent manner possible. This anomaly is compounded by the fact that the debt itself is held by what is, in effect, a holding company of the utility, removing any incentive to ensure management to equity advantage.

Second, and of even greater concern, by allowing the company to fully recover the entire debt interest rate this order shifts virtually all of the risk of the venture – or at least 81 percent of the company’s capital structure constituting debt -- to the customers rather than the investors.

In the traditional regulatory compact, the investor takes risk in a utility venture to make a profit. The customer, able to purchase the utility service from no other provider within the company's designated service territory, is responsible only for compensating the investor for the prudently incurred costs necessary to provide the utility service the customer uses. This Order violates this fundamental tenet of the compact by shifting risk – 81 percent of the risk – from investors where it rightly belongs to customers, where it belongs not at all.

This Commission, in establishing just and reasonable rates, must ensure that a utility has a reasonable opportunity to make a fair profit. That opportunity to make a profit is not a guarantee of profit. Given the curious nature of the debt-to-equity ratio of 81 percent to 19 percent in this case, and the fact that the lender of the debt is of the parent company, this Order risks erring in guaranteeing a profit, rather than providing a just and reasonable opportunity to earn a profit.

In arguendo, the Commission could have avoided these issues simply by selecting an ROE within the range suggested by staff and the company that would have been higher – such as 14 percent, and a debt cost amount lower than the ROE, such as a 95-5 split that is typically used in fuel adjustment clause cases by the Commission, which would have reduced the debt recovery amount to 13.3 percent. This would have better encouraged prudent equity management by properly pricing equity higher than debt, and it would have shifted a portion of the debt risk away from customers and to investors where it rightly belongs. Such, however, is not the directive of this Order.

For the reasons cited above, this Commissioner dissents from the majority in WR-2016-0064 et al.

Respectfully,

A handwritten signature in dark ink, appearing to read "Stephen M. Stoll". The signature is written in a cursive, flowing style.

Stephen M. Stoll
Commissioner

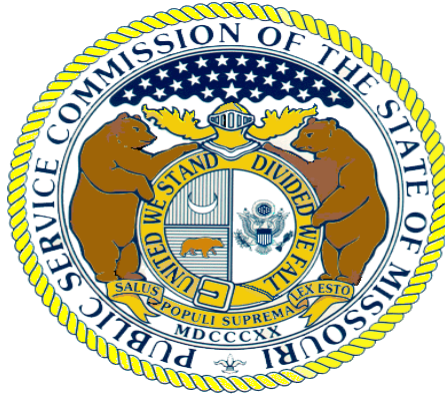
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Melody Sue Moss,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. IC-2015-0286
	)	
Windstream Missouri, Inc.,	)	
	)	
Respondent.	)	

SERVICE**§48. Protection, location and liability for damage**

Complainant did not carry her burden of proving that telecommunications landline's signal converted into electric discharges that harmed her while using her telephone.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



REPORT AND ORDER

Issue Date: July 20, 2016

Effective Date: August 19, 2016

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Melody Sue Moss,	)	
	)	
Complainant,	)	
v.	)	<u>File No. IC-2015-0286</u>
	)	
Windstream Missouri, Inc.,	)	
Respondent	)	

Appearances

Melody Sue Moss, Complainant, appeared *pro se*

Larry Dority, Attorney for Windstream Missouri, Inc.

Marcella Mueth and Cully Dale, Attorneys for the Staff of the Commission

Judge: Kim S. Burton and Kennard Jones, Senior Regulatory Law Judges

REPORT AND ORDER

Syllabus: The Commission concludes that Windstream Missouri, Inc. has not violated any statute within the Commission's jurisdiction, the company's tariff, or any Commission rule or order.

Background

Melody Sue Moss (Complainant) complained to Windstream Missouri, Inc. (Windstream) that when using her telephone she received severe shocks and could hear/feel pulsating currents through the telephone. Concerned that she may suffer physical harm from these phenomena, Complainant requested that her Network Interface Device (NID) and wires, which transverse under the crawl space of her home, be moved. Her request was grounded in the theory that ductwork under her home acted as a rectifier, turning alternating electrical currents into direct currents and thus causing her harm. Complainant also requests \$3,000 as damages for mental anguish.

On May 5, 2015, Complainant filed a complaint with the Missouri Public Service Commission (Commission) against Windstream. On May 6, 2015, the Commission directed the Staff of the Public Service Commission (Staff) to investigate and file a report concerning complaint. After Staff investigated and filed a report, the Commission held an evidentiary hearing on April 1, 2016, in Piedmont, Missouri. During the evidentiary hearing, the Commission admitted the testimony of four witnesses and received three exhibits into evidence. On April 29, the Regulatory Law Judge filed a Notice of Recommended Report and Order. On May 6, Windstream submitted comments in support of the Regulatory Law Judge's Recommendation. In response to the Judge's recommendation, on June 14, Staff forwarded comments received from Ms. Moss.

Findings of Fact

1. Complainant made an informal request to have her Network Interface Device (NID) moved.¹
2. In order for Windstream to act on Complainant's request to have her NID moved, Complainant would need to make a formal request, which includes an application and payment.²
3. Steven Findley has 29 years of experience in the telecommunications field, with 23 of those years being with Windstream.³
4. Steven Findley has personal experience with the issues raised by Complainant.⁴

¹ Tr. page 44, lines 2-11.

² Tr. page 44, lines 12-15.

³ Tr. page 45, line 22 – page 46, line 13.

5. The NID serving Complainant's telephone service is properly bonded and grounded.⁵

6. There is no reason to move the NID from where it is currently located.⁶

7. When Myron Couch, of the Staff of the Commission, visited Complainant's home, there was no telephone wire on the ductwork running through the crawl space under her home.⁷

8. The NID, the stained glass window, AC unit and the ductwork on Complainant's home do not act as an electromotive force or oscillations or rectifiers for the conduction of electricity.⁸

9. The first knowledge of the Company being made aware that Complainant wanted her NID moved was during the prehearing conference in this case.⁹

10. The cost of moving the NID will be well in excess of \$150, which Complainant believes Windstream quoted as a price.¹⁰

11. Complainant wants the wires moved from under her home to the outer perimeter of her home, and she is able to either do that herself or hire an electrician to move the telephone line.¹¹

⁴ Tr. page 47, lines 1-7.

⁵ Tr. page 48, lines 20-23.

⁶ Tr. page 49, lines 2-5.

⁷ Tr. page 62, lines 12-13.

⁸ Tr. page 65, lines 1-19.

⁹ Tr. page 70, line 24 – page 71, line 5.

¹⁰ Tr. page 78, lines 2-11.

12. Complainant has a correctly installed NID, which is bonded to the electric ground, connected to the multi-grounded neutral. This is the safest installation that the telephone company is able to make.¹²

13. Complainant's inside wire is not routed over the ductwork under her home but is routed directly from the NID to two locations in her home where she has wall telephones.¹³

Conclusions of Law

The Staff of the Commission argues that the Commission does not have jurisdiction over this complaint because Complainant's telephone service is properly grounded.¹⁴ By that rationale, if Complainant's telephone service is not properly grounded, then the Commission has jurisdiction. Pursuant to Section 386.390, any person may make a complaint to the Commission asserting, "any act of thing done or omitted to be done by any corporation, person or public utility...in violation, or claimed violation, of any provision of law, or of any rule or order or decision of the commission...." Commission rule 4 CSR 240-28.060 states that any company providing intrastate telecommunication service shall comply with the safety standards identified in 4 CSR 240-18.010. Whether Complainant's telephone service is properly grounded is, therefore, a fact to be determined. The Commission held a hearing in order to determine whether, in fact, Complainant's telephone service is properly grounded.

¹¹ Tr. page 82, line 13 – page 82, line 2; and, page 84, line 16 – page 85, line 3.

¹² Tr. page 65, lines 19-24.

¹³ Staff Exhibit 1, page 2, paragraph 2 of the memorandum.

With regard to Complainant's request for damages, the Commission has no authority to award damages.¹⁵

The Complainant has the burden of proving that Windstream has violated the law, its tariff or is otherwise engaging in unjust or unreasonable action.¹⁶

Discussion

Considering the testimony presented by both the Staff of the Commission and Windstream, Complainant's claims of injury caused by her telephone line are not credible. Experts have sworn that Complainant's telephone line is working properly and is not conducting electricity as claimed by Complainant. Complainant has not shown that the NID is working improperly.

Complainant has also requested that the Company move a telephone line from under her home. Complainant's reason for this request, that the wire under her home causes electrical disturbances and could cause her harm, is unfounded. Further, in light of Staff's investigation and testimony, there are no telephone wires traversing the crawl space under Complainant's home. Complainant has not carried her burden of proving otherwise.

Decision

The Complainant has not shown that Windstream has violated the law, its tariff or any Commission rule. Complainant's request for relief is, therefore, denied.

¹⁴ Tr. page 114, line 19 – page 115, line 3.

¹⁵ *State ex rel. GS Techs. Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

¹⁶ *State ex rel GS Technologies Operating Co. Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

THE COMMISSION ORDERS THAT:

1. Melody Sue Moss' complaint is denied.
2. This Report and Order shall become effective on August 19, 2016.
3. This file shall close on August 20, 2016.

**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 20th of July, 2016.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Chantel R. Muhammad,)
)
Complainant,)
)
v.)
)
Laclede Gas Company)
)
Respondent.)

File No. GC-2016-0010

GAS

§21. Service

Complainant did not offer any evidence showing that he took any action described by regulation to dispute any part of his bill, that his meter was faulty and led to under-billing, or that under-billing led to his disconnection. The uncontested evidence showed that the disconnection resulted from compliance with a Commission safety regulation that required the natural gas company to replace a defective valve in a curb box. Compliance with that regulation did not require evacuation and disconnection pending that replacement did not violate any Commission regulation.

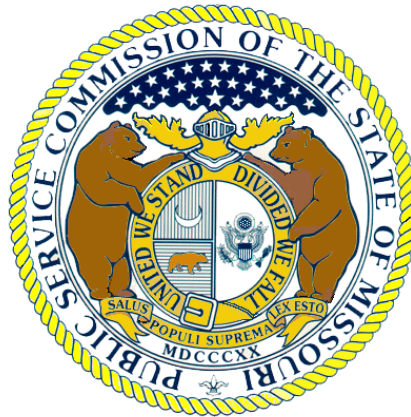
§33. Billing practices

Complainant did not offer any evidence showing that he took any action described by regulation to dispute any part of his bill, that his meter was faulty and led to under-billing, or that under-billing led to his disconnection. The uncontested evidence showed that the disconnection resulted from compliance with a Commission safety regulation that required the natural gas company to replace a defective valve in a curb box. Compliance with that regulation did not require evacuation and disconnection pending that replacement did not violate any Commission regulation.

§35. Safety

Complainant did not offer any evidence showing that he took any action described by regulation to dispute any part of his bill, that his meter was faulty and led to under-billing, or that under-billing led to his disconnection. The uncontested evidence showed that the disconnection resulted from compliance with a Commission safety regulation that required the natural gas company to replace a defective valve in a curb box. Compliance with that regulation did not require evacuation and disconnection pending that replacement did not violate any Commission regulation.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Chantel R. Muhammad,

Complainant,

V.

Laclede Gas Company

Respondent.

File No. GC-2016-0010

REPORT AND ORDER

Issue Date: October 19, 2016

Effective Date: November 18, 2016

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of October, 2016.

Chantel R. Muhammad,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. GC-2016-0010
	)	
Laclede Gas Company	)	
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: October 19, 2016

Effective Date: November 18, 2016

The Missouri Public Service Commission is denying relief on the complaint of Chantel R. Muhammad against Laclede Gas Company ("Laclede").

Summary

Mr. Muhammad argues that the Commission should relieve him of his current gas bill, alleging that Laclede incorrectly billed him for natural gas ("gas") in 2008 ("the 2008 bill") and unlawfully disconnected his gas service in 2015 ("the 2015 disconnection"). But the 2015 disconnection occurred because of a safety issue, not because of the 2008 bill. And the 2008 bill charged Mr. Muhammad for only one year out of three under-billed years, as the Commission's regulations require, leaving an uncollectible \$2,000. In addition, over \$4,000 more is due on Mr. Muhammad's account for gas that Mr. Muhammad has consumed since 2011. Mr. Muhammad makes other arguments as to safety and accurate metering. The Commission is also ruling against those arguments.

Procedure

Mr. Muhammad filed the complaint¹ and a more definite statement.² Laclede filed an answer.³ The Commission's staff ("Staff") filed a recommendation.⁴ Based on those filings, the Commission issued an order defining the issues for hearing.⁵ The Commission convened an evidentiary hearing on the merits of the complaint.⁶ The Commission received initial briefs and reply briefs from Laclede and Mr. Muhammad.⁷

The regulatory law judge issued a recommended decision.⁸ The Commission received comments on the recommended decision from Laclede.⁹ The Commission is approving the recommended decision with modifications to address Laclede's comments and to address Mr. Muhammad's arguments more clearly.¹⁰

This report and order is subject to an application for rehearing filed no later than the business day before the effective date of this report and order, and to judicial review, as set forth in Sections 386.500 to 386.540, RSMo 2000 and RSMo Supp. 2013.

¹ Electronic Filing and Information System ("EFIS") No. 1 (July 28, 2015) *Formal Complaint*.

² EFIS No. 41 (May 25, 2016) *Response to Order to File a More Definitive and Certain Statement*.

³ EFIS No. 4 (August 10, 2015) *Laclede Gas Company's Answer to Complaint*.

⁴ EFIS No. 6 (August 21, 2015) *Staff Recommendation*.

⁵ EFIS No. 43 (May 26, 2016) *Order and Notice of Hearing*.

⁶ EFIS No. 63 (August 16, 2016) *Transcript - Volume 2 (Evidentiary Hearing 8-12-16)*.

⁷ EFIS No. 72 (September 19, 2016) *Laclede Gas Company's Initial Brief*. EFIS No. 73 (September 22, 2016) *Laclede Gas Company's Reply Brief*. EFIS No. 75 (September 28, 2016) *Complainant Brief*. EFIS No. 74 (September 28, 2016) *Complainant Reply Brief*.

⁸ EFIS No. 76 (October 4, 2016), *Notice of Recommended Report and Order*. The file reflects extensions of time to file an answer, conduct discovery, and brief the case. Those circumstances constitute good cause to extend the time for issuing the recommended decision. 4 CSR 240-2.070(15)(G).

⁹ EFIS No. 77 (October 13, 2016) *Laclede Gas Company's Comments on Recommended Report and Order*. 4 CSR 240-2.070(15)(H).

¹⁰ 4 CSR 240-2.070(15)(H).

Standards

Mr. Muhammad has the burden of proving the allegations in his complaint¹¹ by the preponderance of the evidence.¹² Preponderance means evidence weighing more in favor of¹³ than against¹⁴ the complaint. The Commission has weighed the substantial and competent evidence on the whole record, and makes each ruling on consideration of each party's allegations and arguments, and the reasonable inferences from that evidence.

Where the evidence conflicts, the Commission must determine which evidence is most credible and may do so implicitly.¹⁵ The Commission's findings reflect its determinations of credibility, and no law requires the Commission to make any statement as to which portions of the record the Commission believes or disbelieves.¹⁶ The Commission will not discuss matters that are not dispositive.

Under those standards, the Commission makes the following findings of fact, and makes public the following information furnished to the Commission.¹⁷

Findings of Fact

1. At all relevant times, Mr. Muhammad resided at 730 Dover, St. Louis, Missouri.¹⁸ That unit was part of a duplex.¹⁹ The other unit in the duplex was 732 Dover,

¹¹ *AG Processing, Inc. v. KCP & L Greater Missouri Operations Co.*, 385 S.W.3d 511, 515-16 (Mo. App., W.D. 2012).

¹² *Spencer v. Zobrist*, 323 S.W.3d 391, 398 (Mo. App., W.D. 2010).

¹³ *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

¹⁴ *Hager v. Director of Revenue*, 284 S.W.3d 192, 197 (Mo. App., S.D. 2009).

¹⁵ *Stone v. Missouri Dept. of Health & Senior Services*, 350 S.W.3d 14, 26 (Mo. banc 2011).

¹⁶ *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

¹⁷ Section 386.480, RSMo 2000.

occupied by Mr. Muhammad's neighbor and landlord Leon Edmond,²⁰ whose account was current at all relevant times.²¹

2. Laclede's main connected to both units' service lines at a curb box, which led to a separate meter for each unit in the duplex's basement.²²

3. On October 1, 2005, Mr. Muhammad initiated service with Laclede. From that date until May 2009, Laclede's alternatives for measuring consumption by Mr. Muhammad were estimates or actual consumption.²³ Consumption of gas is measured on a meter that records hundreds of cubic feet ("ccf").²⁴

Billing

4. On October 1, 2005, the actual meter reading for Mr. Muhammad ended with 2895.²⁵ On October 22, 2005, the actual meter reading for Mr. Muhammad ended with 2896, just 1 ccf.²⁶ That consumption is very low compared to the average residential customer, who consumes 30 ccf in October,²⁷ but it guided Laclede's estimated bills for the next three years.²⁸

¹⁸ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 79, line 21 through 23.

¹⁹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 79, line 8 through 15.

²⁰ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 79, line 24 through 25.

²¹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 65, line 14 through 16.

²² EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 79, line 16 through 20.

²³ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 84, line 5 through 13.

²⁴ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 82, line 11 through 16.

²⁵ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 81, line 20 through 24.

²⁶ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 82, line 2 through 10.

²⁷ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 83, line 2 through 8.

²⁸ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 94, line 19 through page 95, line 1.

5. In December 2005, a third party that contracted with Laclede—not a Laclede employee—obtained access to the basement and installed an automated meter reader (“AMR”), a device that automatically sends readings over a cellular network, in the meter serving Mr. Edmond. The contractor did not install an AMR in Mr. Muhammad’s meter, most likely because Mr. Muhammad’s meter is of a different make.²⁹

6. Laclede requested access in about 41 letters and postcards sent to Mr. Muhammad, seeking to install an AMR,³⁰ a device that automatically sends readings over a cellular network.³¹ Mr. Muhammad never responded to any of those requests for access,³² so Laclede could not take meter readings, and could not install an AMR.³³ Therefore, estimated billing based on estimated consumption was necessary from November 2005 through September 2008.³⁴

7. On September 23, 2008, Laclede’s estimated consumption for Mr. Muhammad had reached an estimated reading ending with 3307.³⁵ Laclede billed Mr. Muhammad for about 411 ccf in the past three years.³⁶ That much gas cost about \$1,040.41, which Laclede billed.³⁷

²⁹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 84, line 19 through page 90, line 19.

³⁰ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 103, line 1 through 13.

³¹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 84, line 19 through page 90, line 19.

³² EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 103, line 23 through 25.

³³ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 103 line 9 through 13.

³⁴ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 84 line 5 through 16.

³⁵ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 93, line 21 through page 94, line 3.

³⁶ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 4.

³⁷ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 7.

8. On October 11, 2008, the actual meter reading for Mr. Muhammad³⁸ ended with 6428.³⁹ Mr. Muhammad had consumed 3,532 ccf in the previous three years.⁴⁰ The cost of that gas was about \$4,208.06.⁴¹ Laclede had under-billed Mr. Muhammad by about \$3,167.65 over the previous three years.⁴²

9. In October 2008, Laclede sent Mr. Muhammad the 2008 bill.⁴³ The 2008 bill charged Mr. Muhammad for only the previous 12 months,⁴⁴ which left about \$2,000 in consumption unbilled.⁴⁵

10. In May 2009, Laclede installed an AMR, after which all readings for Mr. Muhammad were actual.⁴⁶

11. By January 2011, Mr. Muhammad had paid the 2008 bill down to about \$99.00.⁴⁷

12. But in 2011, Mr. Muhammad underpaid his bill by \$577.03.⁴⁸ In 2012, Mr. Muhammad underpaid his bill by \$582.48.⁴⁹ In 2013, Mr. Muhammad made no payments at all, which caused him to fall behind \$1,188 more.⁵⁰

³⁸ Obtained in the course of a required safety inspection. EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 91, line 1 through 24.

³⁹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 92, line 11 through page 93 line 11. EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 5. EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 97, line 19 through 22.

⁴⁰ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 6.

⁴¹ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 8.

⁴² EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 9.

⁴³ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 95, line 8 through 16.

⁴⁴ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 10.

⁴⁵ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column 11. EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 99, line 6 through 8.

⁴⁶ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 103 line 4 through 8.

⁴⁷ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 104 line 13 through 19.

13. From 2011 to 2015, Mr. Muhammad's denial of access to his meter thwarted Laclede's attempts to disconnect service.⁵¹ Pursuant to a May 2015 disconnect notice,⁵² Mr. Muhammad owed \$4,079.07 on his gas bill.⁵³ The charges on Mr. Muhammad's bill became delinquent after June 15, 2015.⁵⁴

Disconnection

14. On June 22, 2015, a Laclede service technician again visited the property to disconnect service and again could not gain access to the meter.⁵⁵

15. The technician then checked the curb box to see whether the technician could disconnect service to Mr. Muhammad from outside the duplex.⁵⁶ The technician saw that the curb box had only one valve for the duplex's two units, so turning off the gas at the curb would also have interrupted service to Mr. Edmond, whose account was paid and not subject to disconnection.⁵⁷

16. But the technician also saw that the valve was sheared off.⁵⁸ The sheared-off valve constituted a safety issue so Laclede replaced the valve. That repair required

⁴⁸ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column "Long (short)," row 2011.

⁴⁹ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column "Long (short)" row 2012.

⁵⁰ EFIS No. 65 (August 22, 2016) Exhibit 1, first page, column "Long (short)" row 2013. EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 105 line 4 through page 106, line 10.

⁵¹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 111, line 9 through page 113, line 5.

⁵² EFIS No. 69 (August 22, 2016) Exhibit No. 5, May 21st, 2015 Gas Bill.

⁵³ EFIS No. 69 (August 22, 2016) Exhibit No. 5, May 21st, 2015 Gas Bill.

⁵⁴ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 108, line 12 through 24.

⁵⁵ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 113 line 2 through 8.

⁵⁶ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 113 line through 13.

⁵⁷ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 106 line 17 through 23.

⁵⁸ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 113 line through 13.

Laclede to shut off the gas for the duplex⁵⁹—both Mr. Muhammad's and Mr. Edmond's—on June 22, 2016.⁶⁰ Two days later, Laclede restored service to Mr. Edmond.⁶¹ Laclede did not restore service to Mr. Muhammad.⁶²

17. As of August 12, 2016, Mr. Muhammad's balance for gas consumption and late fees stood at approximately \$4,200.⁶³

Conclusions of Law

The Commission has jurisdiction and authority to rule on a complaint.⁶⁴ The issue in a complaint is whether Laclede violated any statute or Commission regulation, tariff, or order.⁶⁵ Mr. Muhammad alleges that Laclede unlawfully disconnected his service. Laclede argues that the disconnection was lawful under the provisions that allow disconnection for Mr. Muhammad's failures to pay his bill:

(A) Nonpayment of an undisputed delinquent charge [. ⁶⁶]

A delinquent charge is undisputed until a customer takes certain actions to alert a utility of a billing problem⁶⁷ as set forth in the Commission's regulations, which then bar

⁵⁹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 113, line 14 through page 114, line 4.

⁶⁰ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 115, line 5 through 7.

⁶¹ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 115, line 8 through 15.

⁶² EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 115, line 16 through 21.

⁶³ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 104 line 20 through 23.

⁶⁴ Section 393.360.1, RSMo 2000.

⁶⁵ Section 393.360.1, RSMo 2000.

⁶⁶ 4 CSR 240-13.050(1); Laclede's tariff, *P.S.C. Mo. No. 5 Consolidated* page R-12a, 14(1)(A).

⁶⁷ 4 CSR 240-13.045.

disconnection.⁶⁸ Mr. Muhammad does not allege that he took any such action as to any part of his bill.

Billing

At hearing, Mr. Muhammad offered exhibits describing a complaint by the Office of the Public Counsel alleging that Laclede has over-earned,⁶⁹ and inaccurate readings from a gas meter in Bonne Terre, Missouri.⁷⁰ But no evidence shows that Mr. Muhammad's meter was inaccurate or that Laclede has earned more than its return on equity from Mr. Muhammad as approved by the Commission. Mr. Muhammad has not shown any violation as to meter accuracy.

Mr. Muhammad cites Laclede's opportunity to install an AMR through its contractor in December 2005. Mr. Muhammad is correct that the lost opportunity for accurate readings has consequences. The period for which Laclede may collect after under-billing is:

. . . twelve (12) monthly billing periods or four (4) quarterly billing periods, calculated from the date of discovery, inquiry or actual notification of [Laclede], whichever was first [⁷¹]

That provision limited Laclede's collection to one year, leaving Laclede with an uncollectible \$2,000. But the 2008 bill complied with that provision.

Mr. Muhammad argues that he should not suffer prejudice from Laclede's under-billing from November 2005 through September 2008. But the under-billing did not cause the 2015 disconnection, a safety issue did. Also, Mr. Muhammad cites no statute

⁶⁸ 4 CSR 240-13.045.

⁶⁹ EFIS No. 67 (August 22, 2016) Exhibit No. 3 - News Report from St. Louis Today.

⁷⁰ EFIS No. 66 (August 22, 2016) Exhibit No. 2 - News Report by Mike Colombo.

⁷¹ 4 CSR 240-13.025(1)(B); Laclede's tariff, P.S.C. Mo. No. 5 Consolidated page R-9, 10.B(A).

or Commission regulation, tariff, or order requiring reconnection while he had over \$4,000 outstanding on his bill unrelated to, and more than six years after, the 2008 bill. Therefore, even if the 2008 bill were erroneous, it did not prejudice Mr. Muhammad.

Disconnection

Mr. Muhammad also cites a provision giving him time to pay before Laclede may disconnect him. That provision bars disconnection based on any bill:

. . . correcting a previous underbilling, whenever [Mr. Muhammad] claims an inability to pay the corrected amount, unless [Laclede] has offered [Mr. Muhammad] a payment arrangement equal to the period of underbilling. [⁷²]

Mr. Muhammad's service continued six and one-half years after the 2008 bill, more than the three years of under-billing, and much more than the one year that the 2008 bill covered. Mr. Muhammad has not shown any violation of that provision.

Mr. Muhammad cites two other provisions involving bills for service to other customers. They bar disconnection for failure to pay the bill of:

(D) . . . another customer, unless [Mr. Muhammad] received substantial benefit and use of the service;

(E) . . . a previous owner or occupant of the premises . . . except where the previous occupant remains an occupant or user [⁷³]

Mr. Muhammad offered no evidence about anyone being billed for gas consumed by anyone else. The 2015 disconnection affected Mr. Edmond, but the 2015 temporary disconnection of Mr. Edmonds was not based on Mr. Muhammad's failure to pay any bill, it was based on a safety rule. Mr. Muhammad has not shown any violation of those provisions.

⁷² 4 CSR 240-13.050(2)(F); Laclede's tariff, *P.S.C. Mo. No. 5 Consolidated* page R-12a, 14(2)(F).

⁷³ 4 CSR 240-13.050(2); Laclede's tariff, *P.S.C. Mo. No. 5 Consolidated* page R-12a, 14(2).

Mr. Muhammad argues that the replacement of the curb box was unlawful and a mere pretext for disconnecting his service. But Laclede cites the Commission's safety rules requiring Laclede to make that repair:

Underground valves. Each underground service line valve must be located in a covered durable curb box or standpipe that allows ready operation of the valve and is supported independently of the service lines. [⁷⁴]

If Laclede had not provided ready operation of the valve, it would have committed a safety violation. As to who sheared off the valve, no party has proved that person's identity, Laclede expressly makes no accusation, and the Commission makes no finding.

Mr. Muhammad attempts to impeach Laclede's credibility with statements that Laclede disconnected Mr. Muhammad from inside the duplex. ⁷⁵ In support, Mr. Muhammad cites a "report" from Laclede.⁷⁶ The report of Staff⁷⁷ sets forth those statements because Staff made its report on incomplete information.⁷⁸ This report and order does not rely on that statement. And, in any event, Staff's statements do not impeach Laclede's credibility.

Mr. Muhammad argues that Laclede failed to give notice to, and evacuate residents from, the duplex when Laclede found the sheared valve and replaced the curb box. But Mr. Muhammad cites no evidence and no statute or Commission regulation, tariff, or order requiring an evacuation, or even a notice, when Laclede found the

⁷⁴ 4 CSR 240-40.030(8)(I)3.

⁷⁵ EFIS No. 75 (September 28, 2016) *Complainant Brief*, first page, paragraph 2.D.

⁷⁶ EFIS No. 74 (September 28, 2016) *Complainant Reply Brief*, first page, paragraph 3.

⁷⁷ EFIS No. 6 (August 21, 2016) *Staff Recommendation*, page 2, paragraph 5.

⁷⁸ EFIS No. 63 (August 24, 2016) *Transcript - Volume 2*, page 74, line 7 through 20.

sheared valve or replaced the curb box; so Mr. Muhammad has not shown any violation as to notice, evacuation, or other safety provisions.

Ruling

Mr. Muhammad has not carried his burden of proving that Laclede violated any statute or Commission regulation, tariff, or order as to the 2008 bill or the 2015 disconnection. The 2015 disconnection occurred as part of a safety repair and not as a result of the 2008 bill. The 2008 bill was correct. Mr. Muhammad has not carried his burden of proving that Laclede violated any statute or any Commission regulation, tariff, or order.

THE COMMISSION ORDERS THAT:

1. All relief requested in connection with the complaint is denied.
2. This order shall be effective on November 18, 2016.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman , CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri
on this 19th day of October, 2016.

Appearances

For:	Appearing:
Chantal R. Muhammad	Chantal R. Muhammad 730 Dover St. Louis MO 63111
Laclede Gas Company	Rick Zucker 700 Market Street, 6th Floor St. Louis MO 63101
Staff of the Missouri Public Service Commission	Mark Johnson and Jeff Keevil P.O. 360 Jefferson City, MO 65102

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of Union Electric)
Company, d/b/a Ameren Missouri, and Platte Clay)
Electric Cooperative, Inc. for an Order Approving the)
Territorial Agreement between Ameren Missouri and) **File No. EO-2017-0044**
Platte Clay Electric Cooperative, Inc. in Ray, Clinton)
Caldwell and Clay Counties, Missouri)

ELECTRIC

§11. Territorial agreements

The Commission approved a territorial agreement when an electric corporation and a rural electric cooperative had provided service to the same area, agreed on the boundary of their service areas going forward, and their arrangement required no change of supplier.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Joint Application of Union Electric
Company, d/b/a Ameren Missouri, and Platte Clay
Electric Cooperative, Inc. for an Order Approving the
Territorial Agreement between Ameren Missouri and
Platte Clay Electric Cooperative, Inc. in Ray, Clinton
Caldwell and Clay Counties, Missouri

)
)
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) **File No. EO-2017-0044**
)
)

REPORT AND ORDER

Issue Date: November 17, 2016

Effective Date: November 27, 2016

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Joint Application of Union Electric)
 Company, d/b/a Ameren Missouri, and Platte Clay)
 Electric Cooperative, Inc. for an Order Approving the)
 Territorial Agreement between Ameren Missouri and) **File No. EO-2017-0044**
 Platte Clay Electric Cooperative, Inc. in Ray, Clinton)
 Caldwell and Clay Counties, Missouri)

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: November 17, 2016

Effective Date: November 27, 2016

This decision approves a Territorial Agreement between Union Electric Company d/b/a Ameren Missouri (Ameren) and Platte-Clay Electric Cooperative, Inc. (the Cooperative), which will designate exclusive service territories in Ray, Clinton, Caldwell, and Clay Counties, Missouri.

Findings of Fact

On August 16, 2016, Ameren and the Cooperative filed a Joint Application requesting approval of their Territorial Agreement setting out exclusive service territories in Ray, Clinton, Caldwell, and Clay Counties, Missouri. The Staff of the Missouri Public Service Commission filed its recommendation on November 14, 2016, advising the Commission that the proposed territorial agreement is not detrimental to the public interest and recommending that it be approved.

Ameren is a Missouri corporation organized and existing under the laws of the State of Missouri, with its principal place of business located at One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103. Ameren is engaged in providing

electric and gas utility services in portions of Missouri as a public utility under the jurisdiction of the Missouri Public Service Commission.

The Cooperative is a corporation organized and existing under the laws of the State of Missouri and has its principal office at 1000 W. 92 Highway, Kearney, Missouri 64060. The Cooperative is organized under Chapter 394 RSMo, as a rural electric cooperative corporation engaged in the distribution of electric energy and service to its members in Missouri.

The proposed territorial agreement, attached as Schedule 1 to the Joint Application, shows and describes to the extent practical the boundaries designated for the Cooperative's and Ameren's respective exclusive service areas within the above-mentioned counties. No other regulated electric supplier provides electric service in the specific areas sought to be designated by the applicants.

Because Ameren and the Cooperative have been operating in the same service territories without a territorial agreement, the service territories have begun to overlap. Thus, the proposed territorial agreement establishes that Ameren and the Cooperative will each retain their existing facilities and customers currently served, even though those facilities and/or customers or members may lie within the exclusive electric service territory of the other electric service supplier. The applicants have attempted to specifically identify these exceptions to their boundaries.¹ Therefore, no request to change the electric service supplier of any customer or member was made in the application and the proposed territorial agreement does not require the transfer of any facilities or customers or members between Ameren and the Cooperative.

¹ *Joint Application*, Schedule 1, Exhibits A, B, and C (filed on August 16, 2016), File No. EO-2017-0044.

According to the facts as evidenced in the application and in Staff's recommendation, the proposed territorial agreement is in the public interest because it will prevent future duplication of electric service facilities, will result in economic efficiencies and cost savings, will benefit the public safety and community aesthetics, and will provide certainty for future customers or members regarding which corporation provides electric service in a particular location. The Territorial Agreement is also in the public interest because it will lessen the chances of future disputes.

Based on the information contained in the verified joint application and recommendation of Staff, the Commission finds that the proposed territorial agreement is not detrimental to the public interest.

Conclusions of Law

Section 394.312, RSMo (Supp. 2010), gives the Commission jurisdiction over electric service territorial agreements between electric corporations and rural electric cooperatives. Under Section 394.312.5, RSMo (Supp. 2010), the Commission may approve such a territorial agreement if in total, the agreement is not detrimental to the public interest. As the Commission found in its findings of fact, the territorial agreement will not be detrimental to the public interest.

Section 394.312.5, RSMo (Supp. 2010), provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, except where all parties agree to waive hearing. The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the

opportunity to present evidence.² Notice was given and no party requested a hearing. Therefore, no hearing is necessary.

Decision

Based on its findings of fact and conclusions of law, the Commission determines that the submitted territorial agreement between Ameren and the Cooperative is not detrimental to the public interest and shall be approved.

THE COMMISSION ORDERS THAT:

1. The Territorial Agreement between Union Electric Company d/b/a Ameren Missouri and Platte-Clay Electric Cooperative, Inc., is approved.
2. This order shall become effective on November 27, 2016.
3. This case shall be closed on November 28, 2016.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dippell, Regulatory Law Judge

Dated at Jefferson City, Missouri,
on this 17th day of November, 2016.

² *Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 SW2d 494 (Mo. App. W.D. 1989).

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union Electric Company	)	
d/b/a Ameren Missouri for Permission and Approval	)	
and a Certificate of Public Convenience and Necessity	)	File No. EA-2016-0208
Authorizing It to Offer a Pilot Distributed Solar	)	
Program and File Associated Tariff	)	

CERTIFICATES

§21. Grant or refusal of certificate generally

In deciding an application for a certificate of convenience and necessity, the standard is whether improved service justifies the cost, and any factors that the Commission employs in applying that standard are the Commission's own guidelines and do not constitute binding authority.

CERTIFICATES

§42. Electric and power

The Commission granted an electric corporation's application for a certificate of convenience and necessity to construct and operate localized solar generating facilities, though the electric corporation did not state where such facilities will be the, because the application included standards for such locations incorporated into the Commission's order, and the project would train the electric corporation's personnel in construction and operation of solar generating facilities in the future.

NOTE: This case was appealed to the Missouri Court Of Appeals (WD80542) and was dismissed with prejudice.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Union Electric Company)
d/b/a Ameren Missouri for Permission and Approval)
and a Certificate of Public Convenience and Necessity)
Authorizing It to Offer a Pilot Distributed Solar)
Program and File Associated Tariff)

File No. EA-2016-0208

REPORT AND ORDER

Issue Date: December 21, 2016

Effective Date: January 20, 2017

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union Electric Company)
d/b/a Ameren Missouri for Permission and Approval)
and a Certificate of Public Convenience and Necessity) **File No. EA-2016-0208**
Authorizing It to Offer a Pilot Distributed Solar)
Program and File Associated Tariff)

APPEARANCES

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WALMART STORES, INC.:

David Woodsmall, Woodsmall Law Office, 308 E. High St., Suite 204, Jefferson City, Missouri 65101.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On April 27, 2016, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) filed an application with the Missouri Public Service Commission (“Commission”) for a certificate of convenience and necessity (“CCN”) authorizing it to construct, install, own, operate, maintain and otherwise control and manage various small solar generation facilities at different locations within its service territory as part of a pilot program.

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Missouri Industrial Energy Consumers; United for Missouri, Inc.; Missouri Department of Economic Development – Division of Energy (“Division of Energy”); Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”)¹; Brightergy, LLC; and Walmart Stores, Inc.² At the unopposed request of the Office of the Public Counsel (“Public Counsel”), the Commission held an off-the-record prehearing conference and established a procedural schedule.

On August 31, 2016, Ameren Missouri; Commission Staff; Division of Energy; Renew Missouri; and United for Missouri, Inc. signed and filed a *Non-Unanimous Stipulation and Agreement* (“Stipulation”) in which those signatory parties reached agreement on all issues related to the pilot program, including specific site selection criteria, review of site information, a \$10 million cap on Ameren Missouri’s capital investment, and

¹ Intervention was granted to Earth Island Institute d/b/a Renew Missouri, but on December 6, 2016, that party filed notice that its name had been changed to Renew Missouri Advocates d/b/a Renew Missouri.

² Missouri Industrial Energy Consumers and United for Missouri, Inc. are parties to this matter, but they did not submit a statement of position on the disputed issues or briefs and asked to be excused from the hearing, so they will not be discussed further.

detailed reporting requirements. Public Counsel objected to the Stipulation, so it becomes a joint position statement of those parties.³ No other party objected to the Stipulation.

The Commission held an evidentiary hearing on October 17, 2016.⁴ During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Sufficiency of the application regarding filing requirements
 - a. Do the terms contained in the Non-unanimous Stipulation and Agreement present a plan meeting the requirements set forth in the CCN statute, section 393.170, RSMo?
 - b. Does the evidence demonstrate the company has provided the information required to comply with the Commission's rules at 4 CSR 240-3.105?
 - c. Does the evidence show that good cause exists to support a waiver of the Commission's rules at 4 CSR-3.105?
2. Criteria for granting a CCN

Does the evidence establish that Ameren Missouri's proposed project as presented in the Non-unanimous Stipulation and Agreement, for which it seeks a CCN, is "necessary or convenient for the public service" within the meaning of section 393.170, RSMo?
3. Termination of pilot program

Is the company's plan outlining treatment of the proposed facilities at the end of 25 years lawful under 393.190, RSMo?

Final post-hearing briefs were filed on November 18, 2016, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.⁵

³ Commission rule 4 CSR 240-2.115(2)(D).

⁴ Transcript, Vols. 1-2. The Commission admitted the testimony of 7 witnesses and 16 exhibits into evidence during the evidentiary hearing.

⁵ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Union Electric Company d/b/a Ameren Missouri is a subsidiary of Ameren Corporation, a public utility holding company.⁶

2. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁷ Staff participated in this proceeding.

3. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo⁸, and by Commission Rule 4 CSR 240-2.010(10).

4. In the Solar Partnership Pilot program (the “pilot program”), Ameren Missouri would own, operate, and maintain photovoltaic solar equipment on a customer’s premises under a long-term lease agreement. Ameren Missouri would retain and own all electricity and associated renewable benefits from the facility. Effectively, each solar installation would constitute a small Ameren Missouri generating unit interconnected to Ameren Missouri’s electric distribution system.⁹

5. The pilot program involves distributed generation, which is electricity generated by one of a variety of small, grid-connected devices, which can be located

⁶ Ex. 2, Barbieri Direct, p. 1.

⁷ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

⁸ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2000 and subsequently revised or supplemented.

⁹ Ex. 1, Harding Direct, p. 2.

throughout the company's service territory at the distribution level as opposed to the transmission level. Distributed generation will play an increasingly important role in Ameren Missouri's electrical system and has benefits for the larger electric grid.¹⁰

6. Solar energy provides a zero-emissions generation alternative and can spur economic development. Increased development of solar energy generation in Missouri is consistent with the overall recommendation in the Missouri Comprehensive State Energy Plan to diversify the state's energy portfolio.¹¹ Solar energy generation will be more important and play an increasing role in Ameren Missouri's energy production in the future.¹²

7. All Ameren Missouri non-residential electric customers in good standing may participate in the pilot program if they have the legal authority to enter into a contractual agreement assigning rights to the company necessary to allow production of electricity on the customer's premises using photovoltaic solar equipment as a renewable resource. The pilot program is available throughout the company's Missouri electric service area not in a flood plain, as long as the distribution facilities of Ameren Missouri are of adequate capacity and configuration and have appropriate phase and suitable voltage adjacent to the site served. The site must be able to support a facility with a minimum of 100 kW-DC (kilowatts measured in direct current) of nameplate capacity.¹³

8. Ameren Missouri anticipates installing three to five facilities through the pilot program, each in the range of between 100 kilowatts to 2 megawatts.¹⁴ Ameren Missouri will spend up to \$2.20/watt-DC on each installation made under the pilot program towards

¹⁰ Ex. 2, Barbieri Direct, p. 6.

¹¹ Ex. 250, Hyman Rebuttal, p. 3; Transcript, Vol. 1, p. 155.

¹² Ex. 2, Barbieri Direct, p. 2-4; Transcript, Vol. 1, p. 127.

¹³ Ex. 1, Harding Direct, p. 2; Stipulation, Appendix A.

¹⁴ Transcript, Vol. 1, p. 75.

the construction and interconnection of the solar generation equipment at qualifying customer sites. Any amount exceeding the \$2.20/watt-DC will be paid by the participating customer as a contribution in aid of construction pursuant to the terms of the lease agreement the customer will enter into with Ameren Missouri for the installation. Ameren Missouri's total capital investment in the pilot program is capped at \$10 million.¹⁵

9. The lease with a participating customer will have a term of 25 years. At the end of the 25-year term, the customer may purchase the facility, renew the lease, or have the facility removed from the property.¹⁶ Ameren Missouri will comply with any legal requirements before exercising any of those options.¹⁷

10. Ameren Missouri will retain all solar renewable energy credits generated from the facilities in the pilot program. In addition, participating customers will not receive a bill credit, lease payment, or other forms of compensation for the use of their property.¹⁸ For these reasons, the pilot program would not fit the needs of every commercial and industrial customer.¹⁹

11. Ameren Missouri does not require additional generation capacity or energy production to meet the needs of its native load at this time. The company can comply with the solar energy portfolio requirements in the Missouri Renewable Energy Standard ("RES") law²⁰ until approximately 2024 without building facilities under this pilot program. However, renewable energy credits from the pilot program facilities can be used to satisfy

¹⁵ Ex. 1, Harding Direct, p. 2; Stipulation, p. 2.

¹⁶ Ex. 1, Harding Direct, p. 2, 4.

¹⁷ Transcript, Vol. 1, p. 77.

¹⁸ Ex. 1, Harding Direct, p. 4; Ex. 250 Hyman Rebuttal, p. 4.

¹⁹ Transcript, Vol. 1, p. 150.

²⁰ Sections 393.1025 and 393.1030, RSMo (Supp. 2013).

other general RES requirements in 2018-2019.²¹ The RES portfolio requirements are minimum thresholds for renewable energy development, not caps.²²

12. Ameren Missouri will be spending approximately \$1 billion in capital over the next 10-12 years to meet the Missouri RES requirements. The information the company learns from the pilot program regarding small-scale distributed solar generation will help it spend those funds wisely and efficiently.²³

13. The reasons that Ameren Missouri is seeking approval of the pilot program are to investigate, develop, and understand the requirements necessary to achieve appropriate contract terms and conditions and to learn about siting, operating, and maintaining utility-owned electrical generation facilities on property owned and controlled by its customers.²⁴ Ameren Missouri currently lacks any real experience with the type of facilities proposed in the pilot program.²⁵

14. Through information acquired in the pilot program, Ameren Missouri expects to gain an understanding of how distributed generation functions on an electrical grid designed primarily for centralized generation and gain experience in dealing with facilities placed on customer premises.²⁶

15. The new information that Ameren Missouri expects to learn from the pilot program includes determining 1) whether multiple sites are cost-effective; 2) the benefits of locating generation closer to load; 3) the benefit of dispersing generation locations to minimize the impacts of cloud cover; and 4) the impact of power surges and intermittency.²⁷

²¹ Ex. 3, Barbieri Surrebuttal, p. 2.

²² Ex. 251, Hyman Surrebuttal, p. 5.

²³ Transcript, Vol. 1, p. 84.

²⁴ Ex. 3, Barbieri Surrebuttal, p. 2.

²⁵ Ex. 2, Barbieri Direct, p. 5-6; Transcript, Vol. 1, p. 129.

²⁶ Ex. 2, Barbieri Direct, p. 7.

²⁷ Transcript, Vol. 1, p. 82.

16. The annual impact to residential customers of the \$10 million in capital expenditures for the pilot program would be approximately 42 cents per customer.²⁸

17. While Ameren Missouri can learn from studying the programs of other utilities, some information, such as working with its customers, requires direct experience for Ameren Missouri to acquire the information it seeks.²⁹ Modeling solar generation using simulated runs produces only speculative results.³⁰ Conducting a feasibility study before facility locations have been determined would be difficult due to the intermittency of solar.³¹ Gaining experience concerning distributed generation on its own electrical system would be beneficial for Ameren Missouri.³²

18. Predictions that project costs would decline substantially if Ameren Missouri delayed the pilot program until a future time are unreliable. The reduction in 2020 of the federal Business Energy Investment Tax Credit would increase total project costs if the pilot program is delayed, resulting in a higher revenue requirement burden on ratepayers.³³

19. Ameren Missouri has been approached by several business entities that are interested in participating in the pilot program in order to demonstrate their overall support for sustainability efforts. These entities are willing to host a utility-owned solar generation facility on their own property without receiving a lease payment. Currently, no specific locations for the pilot program facilities have been determined.³⁴

20. The process for verification of specific site selection criteria agreed to by the signatories to the Stipulation requires Ameren Missouri to file the information required by

²⁸ Transcript, Vol. 1, p. 80.

²⁹ Ex. 3, Barbieri Surrebuttal, p. 3.

³⁰ Transcript, Vol. 1, p. 63.

³¹ Transcript, Vol. 1, p. 112-113.

³² Transcript, Vol. 1, p. 140.

³³ Ex. 251, Hyman Surrebuttal, p. 8; Transcript, Vol 1, p. 62.

³⁴ Ex. 3, Barbieri Surrebuttal, p. 4, 6.

Commission rule 4 CSR 240-3.105(B) and documentation demonstrating site suitability in the docket of this case. Signatory parties will review this information, and Staff will file a report stating whether the selected site meets the criteria. Any disputes will be referred to the Commission for resolution, but construction on a particular site may not begin before completion of the verification process set forth in Appendix A of the Stipulation.³⁵

21. Ameren Missouri is required under the Stipulation to file regular reports in this case describing lessons learned, such as the benefits and challenges of solar generation located on customer property; the impact of distributed generation on the company's electrical grid; and testing how customer interest in the program is affected by sharing of investment, contract terms, and offering lease payments, bill credits or other forms of compensation.³⁶

22. Ameren Missouri was not able to identify specific sites for the solar facilities and enter into contracts with those property owners conditioned upon the Commission subsequently granting a CCN for that particular location. Property owners are unlikely to expend the considerable time, energy, and money required to negotiate a contract if approval for the project may be denied later after a prolonged hearing process at the Commission. Property owners will be much more likely to participate in the pilot program if the Commission's prior approval of a blanket CCN provides a high degree of certainty that the project will be able to move forward upon satisfaction of the conditions in the Stipulation.³⁷

³⁵ Stipulation, p. 2 and Appendix A.

³⁶ Stipulation, p. 3 and Appendix B.

³⁷ Transcript, Vol. 1, p. 102-106.

23. Since specific site locations have not been identified, Ameren Missouri has not yet filed with the Commission all of the usual information related to a CCN application under Section 393.170, RSMo and Commission rule 4 CSR 240-3.105(1)(B).³⁸

24. No party disputes that Ameren Missouri is qualified to provide the solar generation service described in its application or that Ameren Missouri has the financial ability to build the proposed solar facilities.³⁹

III. Conclusions of Law and Discussion

Ameren Missouri is an “electrical corporation”⁴⁰ and “public utility”⁴¹ owning, operating, controlling or managing “electric plant”⁴². The Commission’s jurisdiction includes the authority to approve the pilot program when necessary or convenient for the public service, including the authority to impose reasonable conditions, as stated in Section 393.170, RSMo.⁴³ Since Ameren Missouri brought the application, it bears the burden of

³⁸ Ex. 200, Burdge Rebuttal, p. 8; Ex. 3, Barbieri Surrebuttal, p. 6; Ex. 101, Eubanks Rebuttal, p. 4.

³⁹ Ex. 201, Burdge Surrebuttal, p. 4; Ex. 2, Barbieri Direct, p. 9.

⁴⁰ Section 386.020(15), RSMo.

⁴¹ Section 386.020(43), RSMo.

⁴² Section 386.020(14), RSMo.

⁴³ Section 393.170 states:

1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.
2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.
3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void. (emphasis added)

proof.⁴⁴ The burden of proof is the preponderance of the evidence standard.⁴⁵ In order to meet this standard, Ameren Missouri must convince the Commission it is “more likely than not” that its allegations are true.⁴⁶

A. Sufficiency of the application regarding filing requirements

Section 393.170, RSMo, imposes three requirements that are relevant to Ameren Missouri’s application: 1) the company must obtain the permission and approval of the Commission before beginning construction; 2) the company must file a verified statement with the Commission showing that it has received the consent of municipal authorities; and 3) the company must comply with any reasonable and necessary conditions imposed by the Commission. Commission rule 4 CSR 240-3.105⁴⁷ requires that an applicant for a CCN

⁴⁴ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁴⁵ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

⁴⁶ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁴⁷ Commission rule 4 CSR 240-3.105 states:

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications by an electric utility for a certificate of convenience and necessity shall include:

(B) If the application is for electrical transmission lines, gas transmission lines or electrical production facilities-

1. A description of the route of construction and a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks or any underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;
2. The plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable and a date when it will be furnished; and
3. Plans for financing;

(C) When no evidence of approval of the affected governmental bodies is necessary, a statement to that effect;

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired; and
2. A certified copy of the required approval of other governmental agencies; and

must also provide certain information, including 1) a list of any electric/telephone/railroad/gas lines that may be crossed; 2) plans, specifications and costs of the construction project; 3) financing plans; and 4) evidence of consents from municipal authorities, where applicable. If any of these items are unavailable at the time the application is filed, they must be furnished prior to the granting of the authority sought. The Commission may waive the filing requirements in the rule for good cause shown.⁴⁸

Public Counsel asserts that the Commission must reject Ameren Missouri's application because it does not meet the requirements of the statute or the rule, in that the locations of the solar facilities have not yet been determined and Ameren Missouri has not yet provided all the information required. Public Counsel argues that the Commission cannot determine if the solar facilities are necessary or convenient for the public service when it does not know the specific facility locations, because without that information the Commission cannot evaluate the particular conditions, concerns, and issues for each electric plant. These deficiencies cannot be cured by the procedural provisions in the Stipulation, as these procedures have no basis in law and would minimize the Commission's statutory oversight. Public Counsel cites *StopAquila.Org v. Aquila, Inc.*⁴⁹ as support for its argument that Ameren Missouri must file a new application for a CCN for each solar facility.

(E) The facts showing that the granting of the application is required by the public convenience and necessity.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

⁴⁸ Commission rule 4 CSR 240-3.015 incorporates the waiver provisions in rule 4 CSR 240-2.060(4) for Chapter 3 filing requirements.

⁴⁹ 180 S.W.3d 24 (Mo. App. 2005). This case held, *inter alia*, that Section 393.170.1, RSMo, requires an electric utility to obtain a certificate of convenience and necessity from the Commission before constructing an electrical generating facility within its service territory. That decision also declares that Section 393.170.3, RSMo, requires the Commission to determine contemporaneously with the application whether construction of the electrical generating facility is necessary or convenient for the public service.

The Commission concludes that Public Counsel's interpretation is overly restrictive and that, taken together, the terms contained in the Stipulation present a plan that meets the requirements of Section 393.170 and Commission rule 4 CSR 240-3.105. Ameren Missouri has either already provided the information required or will provide that information prior to constructing the proposed facilities. Appendix A of the Stipulation sets forth specific criteria for evaluating a potential site for a solar facility and a process for review and reporting by Staff and the other signatories. The Stipulation also provides that any disputes regarding whether a site meets these criteria will be referred to the Commission for resolution.

The Commission also finds that Public Counsel's reliance on certain language in *StopAquila.Org* is misplaced because Ameren Missouri's solar pilot program is distinguishable from the facts in *StopAquila.Org*, which concerned the placement of a natural gas-fired turbine electrical generating plant. This case is more similar to the facts of File No. EA-2011-0368⁵⁰ ("SmartGrid"), where Kansas City Power & Light Company sought a CCN to construct and operate multiple small solar energy electrical production facilities located on commercial and residential rooftops in the SmartGrid demonstration area in Kansas City. In its SmartGrid order, the Commission concluded that requiring the company to obtain a new CCN for each small solar production facility would be a waste of resources for both the utility and the Commission. The same reasoning applies to the present case.

⁵⁰ *In the Matter of the Application of Kansas City Power & Light Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing It to Acquire, Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in the Smart Grid Project Area of Jackson County, Missouri*, File No. EA-2011-0368, Order Granting Certificate of Convenience and Necessity, 20 Mo. P.S.C. 3d 565 (2011), EFIS No. 8.

With regard to the issue of whether a waiver of Commission rule 4 CSR 240-3.105 should be granted, the Commission notes that Ameren Missouri has not requested such a waiver. A waiver of Commission rule 4 CSR 240-3.105 is not necessary because the rule is satisfied when all the required information will be provided before construction of the proposed solar facilities. It is common for the Commission to impose conditions that must be subsequently satisfied when granting a CCN without requiring a waiver of the rule. Even if the rule requirements had not been satisfied, the Commission determines that good cause would exist to support a waiver. The pilot program is unique in that it proposes to build utility-owned electrical production facilities on customer property. This requires Ameren Missouri to work with host customers on an individual basis to determine optimum siting locations and conditions for the operation of those facilities. Requiring the company to complete all negotiations with host customers and finalize all engineering and construction plans before applying for a CCN would effectively kill the pilot program because potential partners would be unlikely to invest time and resources before Commission approval has been granted. These additional considerations, which are not present in utility-sited electrical production facility applications, demonstrate good cause for a waiver of the rule.

B. Criteria for granting a CCN

The next issue for determination is whether the evidence establishes that the pilot program for which Ameren Missouri is seeking a certificate of convenience and necessity is necessary or convenient for the public service. When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:

- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant's proposal must be economically feasible; and
- e) The service must promote the public interest.⁵¹

It is important to note that these factors have been developed and implemented by the Commission itself, not by the legislature or the courts, so the Commission is not bound to strictly follow past decisions where it is reasonable to deviate from those standards.

With regard to Ameren Missouri's qualifications and financial ability to provide the service, Ameren Missouri has provided competent and substantial evidence to support its claim. No party disputed these two factors, so the Commission concludes that Ameren Missouri has met its burden of proof demonstrating that it is qualified and has the financial ability to provide the service described in its application for a certificate of convenience and necessity.

Need for the Project

When determining whether the project is necessary or convenient for the public service, the "term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost".⁵² Public Counsel states that Ameren Missouri has failed to provide sufficient evidence to establish that the costs of the pilot program are justified. Public Counsel argues that Ameren Missouri has not been able to quantify any benefits to ratepayers in proceeding with the pilot program, and

⁵¹ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

⁵² *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

the pilot program is not required for Ameren Missouri to meet its native load or comply with current RES standards.

Although all parties agree the pilot program is not required for regulatory compliance at this time, the program is needed to allow Ameren Missouri to gain knowledge and experience regarding deployment of solar generating resources on customer-owned property for the future. The company lacks experience with the kind of distributed solar generation to be constructed for this project, and modeling such generation on simulated runs only produces speculative results. Ameren Missouri will need additional solar generation in the future, and before making decisions at that time to incur such significant costs, the company must learn more about the types of solar generation and the impacts on the electrical grid. A small-scale, limited investment is a reasonable way to investigate and gain knowledge of distributed solar generation before expanding the scale and investment level of this service. In addition, the pilot program will promote diversification of generation resources, may result in reliability benefits similar to the reliability of micro grids, and will aid in RES compliance in the future. The Commission concludes that the pilot program is needed.

Economic Feasibility of the Project

Public Counsel states that Ameren Missouri has failed to provide sufficient evidence that the pilot program is economically feasible. The company has not performed any feasibility studies to determine the costs and benefits, and does not anticipate doing so until after the pilot program is operational.

The Commission has recently recognized that maximizing profit by purchasing the least-cost energy option may not be applicable in the situation of a pilot program where the

purpose of the program is not to provide the cheapest power to the utility's customers. In finding economic feasibility regarding the Greenwood pilot solar plant proposed by KCP&L Greater Missouri Operations Company ("GMO"), the Commission stated that:

[The pilot project's] purpose is to help GMO to develop more and cheaper solar power in the future. The benefits GMO and its ratepayers will ultimately receive from the lessons learned from this pilot project are not easily quantifiable since there is no way to measure the amounts saved by avoiding mistakes that might otherwise be made. But it is likely that future savings will be substantial.⁵³

The Commission concludes that the pilot program is economically feasible because it was designed to provide the company with important knowledge and experience while not burdening its customers with unnecessary costs. The evidence supports the conclusion that the benefits of these learning opportunities far outweigh the annual impact to customers of approximately 42 cents. While the immediate benefits to Ameren Missouri and its ratepayers are not easily quantifiable, in light of the need for additional solar generation in the future it is likely that those future cost savings will be substantial.

Public Interest

Public policy must be found in a constitutional provision, a statute, regulation promulgated pursuant to statute, or a rule created by a governmental body.⁵⁴ The public interest is a matter of policy to be determined by the Commission.⁵⁵ It is within the discretion of the Public Service Commission to determine when the evidence indicates the

⁵³ *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, Report and Order, p. 15, File No. EA-2015-0256, issued March 2, 2016, EFIS No. 84.

⁵⁴ *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 96 (Mo. banc 2010).

⁵⁵ *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). The dominant purpose in creation of the Commission is public welfare. *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

public interest would be served.⁵⁶ Determining what is in the interest of the public is a balancing process.⁵⁷ In making such a determination, the total interests of the public served must be assessed.⁵⁸ This means that some of the public may suffer adverse consequences for the total public interest.⁵⁹ Individual rights are subservient to the rights of the public.⁶⁰ The “public interest” necessarily must include the interests of both the ratepaying public and the investing public.⁶¹

The *Tartan* case stated that the public interest determination “is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.”⁶² Since the Commission has concluded that Ameren Missouri has met all of the *Tartan* factors, by that standard Ameren Missouri has demonstrated that the pilot program promotes the public interest.

Besides the benefit of Ameren Missouri acquiring knowledge and experience in distributed solar generation, the public will similarly benefit. The Stipulation requires Ameren Missouri to report on what it learns, which will be available to the Commission, Staff, and other parties. This information will increase the understanding of the benefits and

⁵⁶ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

⁵⁷ *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

⁶¹ The Missouri Supreme Court has previously held that the Commission must consider the interests of the investing public and that failure to do so would deny them a right important to the ownership of property. *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393 (Mo. banc 1934).

⁶² *In re Tartan Energy*, 3 Mo.P.S.C. 3d at 189.

costs of similar programs and will allow Staff and other groups to make more informed decisions in the future. Like GMO's customers in the GMO Greenwood case cited above, Ameren Missouri's customers also "have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere."⁶³ Ameren Missouri has presented sufficient evidence that the pilot program is necessary and convenient for the public service and should be approved.

C. Termination of pilot program

Section 393.190, RSMo, states, in pertinent part, as follows:

1. No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public... without having first secured from the commission an order authorizing it so to do. ... Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value. (emphasis added)

In his direct testimony at p. 4, Ameren Missouri witness Michael Harding stated:

Question: What happens to the assets at the end of the 25-year term?

Answer: At the end of the 25-year term, the customer may purchase the facility, renew the lease, or have the facility removed from the property.

Public Counsel states that Ameren Missouri's plan for the proposed facility at the end of 25 years is unlawful under Section 393.190 and should be rejected. Public Counsel argues that Ameren Missouri has provided no explanation about the process for seeking

⁶³ Report and Order, File No. EA-2015-0256, p. 15.

Commission approval or commitments made to the customer. Offering the listed options to potential partners without making them aware that future treatment of the facilities is subject to Commission approval could be misleading and, without a plan in place, will create future problems.

The Commission concludes that the company's plan outlining the treatment of the proposed facilities at the end of 25 years is lawful under Section 393.190. Nothing in the application, Stipulation, or testimony relieves Ameren Missouri of its obligation to seek Commission approval if this situation arises, and Ameren Missouri agrees to comply with those requirements. Since there is no legal requirement that the Commission determine the treatment of the proposed facilities after the 25-year term at this point in time, and Ameren Missouri has agreed to comply when necessary to do so, Ameren Missouri's plan is lawful under Section 393.190, RSMo.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Ameren Missouri has met, by a preponderance of the evidence, its burden of proof to demonstrate that the pilot program as described in its application for a certificate of convenience and necessity is necessary and convenient for the public service. Therefore, the Commission will grant the Ameren Missouri application, subject to the conditions and terms contained in the Stipulation. In granting the application, the Commission is not making any policy determinations regarding the preferred structure of distributed solar generation programs in the future.

THE COMMISSION ORDERS THAT:

1. Union Electric Company d/b/a Ameren Missouri's application for a certificate of convenience and necessity filed on April 27, 2016, is granted, subject to the terms and conditions of the *Non-Unanimous Stipulation and Agreement* filed on August 31, 2016. This Stipulation and Agreement is attached hereto as Attachment A and incorporated herein as if fully set forth. The signatory parties are ordered to comply with the terms of that Stipulation and Agreement.

2. This order shall become effective on January 20, 2017.

**BY THE COMMISSION**

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 21st day of December, 2016.

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

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- §38.1. Book/tax timing differences
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- §39.1. OPEBS, Postretirement benefits other than pensions
- §40. Working capital and current assets
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- §42. Accounting Authority Orders
- §43. Financial Accounting Standards Board requirements

ACCOUNTING

No headnotes in this volume involved the question of accounting.

CERTIFICATES

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- §1. Generally
- §2. Unauthorized operations and construction
- §3. Obligation of the utility

II. JURISDICTION AND POWERS

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- §5. Jurisdiction and powers of Federal Commissions
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- §7. Jurisdiction and powers of local authorities
- §8. Jurisdiction and powers over interstate operations
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- §46. Telecommunications
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- §55. Transferability of rights
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- §60. Revocation, cancellation and forfeiture generally
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- §62. Necessity of action by the Commission
- §63. Penalties

CERTIFICATES

§21. Grant or refusal of certificate generally

In deciding an application for a certificate of convenience and necessity, the standard is whether improved service justifies the cost, and any factors that the Commission employs in applying that standard are guidelines that do not substitute for the standard. EA-2015-0256 **26 MPSC 3d 55**

§21. Grant or refusal of certificate generally

In deciding an application for a certificate of convenience and necessity, the standard is whether improved service justifies the cost, and any factors that the Commission employs in applying that standard are the Commission's own guidelines and do not constitute binding authority.

EA-2016-0208 **26 MPSC 3d 298**

§22. Restrictions and conditions

The Commission granted applications for a water company to transfer its assets, for a buyer to operate a water company, and for the buyer to encumber the assets as collateral for financing to improve service, subject to conditions related to contracting for services, accounting, and recordkeeping. WO-2016-0045 **26 MPSC 3d 4**

§42. Electric and power

The Commission granted an electric corporation's application for a certificate of convenience and necessity to construct and operate localized solar generating facilities, though the electric corporation did not state where such facilities will be the, because the application included standards for such locations incorporated into the Commission's order, and the project would train the electric corporation's personnel in construction and operation of solar generating facilities in the future. EA-2016-0208 **26 MPSC 3d 298**

§42. Electric and power

The Commission granted an electric corporation's application for a certificate of convenience and necessity to construct and operate a pilot solar generating facility, though the electric corporation did not need the extra wattage and such was wattage was available by less expensive means, because the project would train the electric corporation's personnel in construction and operation of larger solar

generating facility in the future. EA-2015-0256 **26 MPSC 3d 55**

§42. Electric and power

The Commission granted an electric corporation's application for a certificate of convenience and necessity to construct and operate a transmission line across five counties without the assent of the county commissions of those counties, but made those assents a condition of the certificate. EA-2015-0146 **26 MPSC 3d 76**

DEPRECIATION

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DEPRECIATION

No headnotes in this volume involved the question of depreciation.

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- §3. Recovery of damages for discrimination
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- §5. Reports, records and statements

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- §6. Jurisdiction and powers of the State Commission
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- §9. Competitor's right to equal treatment
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- §11. Inequality of rates
- §12. Methods of eliminating discrimination
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- §18. Concessions

IV. RATES BETWEEN CLASSES

- §19. Bases for classification and differences
- §20. Right of the utility to classify
- §21. Reasonableness of classification

V. RATES AND CHARGES OF PARTICULAR UTILITIES

- §22. Electric and power
- §23. Gas
- §24. Heating
- §25. Telecommunications
- §26. Sewer
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VI. SERVICE IN GENERAL

- §28. Service generally
- §29. Abandonment and discontinuance
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- §32. Extensions
- §33. Preference during shortage of supply
- §34. Preferences to particular classes or persons

VII. SERVICE BY PARTICULAR UTILITIES

- §35. Electric and power
- §36. Gas
- §37. Heating
- §38. Sewer
- §39. Telecommunications
- §40. Water

DISCRIMINATION

No headnotes in this volume involved the question of discrimination.

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- §3. Certificate of convenience and necessity**
- §4. Transfer, lease and sale**
- §4.1. Change of suppliers**
- §5. Charters and franchise**
- §6. Territorial agreements**

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers generally**
- §8. Jurisdiction and powers of Federal Commissions**
- §9. Jurisdiction and powers of the State Commission**
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- §19. Discrimination**
- §20. Rates**
- §21. Refunds**
- §22. Revenue**
- §23. Return**
- §24. Services generally**
- §25. Competition**
- §26. Valuation**
- §27. Accounting**
- §28. Apportionment**
- §29. Rate of return**
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- §37. Liability for damage**
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- §46. Relations between connecting companies generally
- §47. Physical connection
- §48. Contracts
- §48.1 Qualifying facilities
- §49. Records and statements

ELECTRIC

§11. Territorial agreements

The Commission approved a territorial agreement when an electric corporation and a rural electric cooperative had provided service to the same area, agreed on the boundary of their service areas going forward, and their arrangement required no change of supplier. EO-2017-0044 **26 MPSC 3d 292**

§22. Revenue

When customers called an electric corporation, the electric corporation transferred some of those customers to another entity that offered to sell the customer more services, and the transfer included the specific customer's information. That conduct violated a Commission rule, barring an electric corporation from making specific customer information available to another entity, affiliated or unaffiliated. The Commission ordered the electrical corporation to cease that conduct, and altered the accounting treatment for the revenue that the electric corporation generated from referring calls, but did not seek monetary penalties for that conduct. EC-2015-0309 **26 MPSC 3d 122**

EVIDENCE, PRACTICE AND PROCEDURE

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- §5. Admissibility**
- §6. Weight, effect and sufficiency**
- §7. Competency**
- §8. Stipulation**

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- §15. Opinions and conclusions; evidence by experts**
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- §24. Procedures, evidence and proof**
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- §29. Discovery**
- §30. Settlement procedures**
- §31. Mediator**
- §32. Confidential evidence**
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EVIDENCE, PRACTICE AND PROCEDURE

§28. Arbitration

The Commission has no authority to compel a public utility into arbitration. WR-2015-0301 **26 MPSC 3d 172**

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- §3. Financing practices**
- §4. Apportionment**
- §5. Valuation**
- §6. Accounting**

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers of the State Commission**
- §8. Jurisdiction and powers of the Federal Commissions**
- §9. Jurisdiction and powers of local authorities**

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- §18. Comparisons in absence of evidence**
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- §27. Additions and betterments
- §28. Advertising, promotion and publicity
- §29. Appraisal expense
- §30. Auditing and bookkeeping
- §31. Burglary loss
- §32. Casualty losses and expenses
- §33. Capital amortization
- §34. Collection fees
- §35. Construction
- §36. Consolidation expense
- §37. Depreciation
- §38. Deficits under rate schedules
- §39. Donations
- §40. Dues
- §41. Employee's pension and welfare
- §42. Expenses relating to property not owned
- §43. Expenses and losses of subsidiaries or other departments
- §44. Expenses of non-utility business
- §45. Expenses relating to unused property
- §46. Expenses of rate proceedings
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- §53. Losses in distribution
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- §64. Salaries and wages
- §65. Savings in operation
- §66. Securities redemption or amortization
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- §71. Interest expense

- §72. Preliminary and organization expense
- §73. Expenses incurred in acquisition of property
- §74. Demand charges
- §75. Expenses incidental to refunds for overcharges
- §76. Matching revenue/expense/rate base
- §77. Adjustments to test year levels
- §78. Isolated adjustments

EXPENSE

§41. Employee's pension and welfare

The appropriate level of pay for corporate officers was above the "entry" level and below "experienced" level, so the Commission used the "mean" level. WR-2016-0064 **26 MPSC 3d 229**

§76. Matching revenue/expense/rate base

The Commission excluded from rate base certain expenses, or portions of expenses, incurred outside the test year. WR-2016-0064 **26 MPSC 3d 229**

GAS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
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- §22. Weatherization
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- §25. Apportionment
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- §37. Division of revenue
- §38. Division of expenses
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- §40. Transportation
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- §42. Particular kinds of expenses generally
- §43. Accidents and damages
- §44. Additions and betterments
- §45. Advertising, promotion and publicity
- §46. Appraisal expense
- §47. Auditing and bookkeeping
- §48. Burglary loss
- §49. Casualty losses and expenses
- §50. Capital amortization
- §51. Collection fees
- §52. Construction

§53.	Consolidation expense
§54.	Depreciation
§55.	Deficits under rate schedules
§56.	Donations
§57.	Dues
§58.	Employee's pension and welfare
§59.	Expenses relating to property not owned
§60.	Expenses and losses of subsidiaries or other departments
§61.	Expenses of non-utility business
§62.	Expenses relating to unused property
§63.	Expenses of rate proceedings
§64.	Extensions
§65.	Financing costs and interest
§66.	Franchise and license expense
§67.	Insurance and surety premiums
§68.	Legal expense
§69.	Loss from unprofitable business
§70.	Losses in distribution
§71.	Maintenance and depreciation; repairs and replacements
§72.	Management, administration and financing fees
§73.	Materials and supplies
§74.	Purchases under contract
§75.	Office expense
§76.	Officers' expenses
§77.	Political and lobbying expenditures
§78.	Payments to affiliated interests
§79.	Rentals
§80.	Research
§81.	Salaries and wages
§82.	Savings in operation
§83.	Securities redemption or amortization
§84.	Taxes
§85.	Uncollectible accounts
§86.	Administrative expense
§87.	Engineering and superintendence expense
§88.	Interest expense
§89.	Preliminary and organization expense
§90.	Expenses incurred in acquisition of property
§91.	Demand charges
§92.	Expenses incidental to refunds for overcharges

GAS**§21. Service**

Complainant did not offer any evidence showing that he took any action described by regulation to dispute any part of his bill, that his meter was faulty and led to underbilling, or that underbilling led to his disconnection. The uncontested evidence showed that the disconnection resulted from compliance with a Commission safety regulation that required the natural gas company to replace a defective valve in a curb box. Compliance with that regulation did not require evacuation and disconnection pending that replacement did not violate any Commission regulation. GC-2016-0010 **26 MPSC 3d 277**

§33. Billing practices

Complainant did not offer any evidence showing that he took any action described by regulation to dispute any part of his bill, that his meter was faulty and led to underbilling, or that underbilling led to his disconnection. The uncontested evidence showed that the disconnection resulted from compliance with a Commission safety regulation that required the natural gas company to replace a defective valve in a curb box. Compliance with that regulation did not require evacuation and disconnection pending that replacement did not violate any Commission regulation. GC-2016-0010 **26 MPSC 3d 277**

§35. Safety

Complainant did not offer any evidence showing that he took any action described by regulation to dispute any part of his bill, that his meter was faulty and led to underbilling, or that underbilling led to his disconnection. The uncontested evidence showed that the disconnection resulted from

compliance with a Commission safety regulation that required the natural gas company to replace a defective valve in a curb box. Compliance with that regulation did not require evacuation and disconnection pending that replacement did not violate any Commission regulation. GC-2016-0010 **26 MPSC 3d 277**

MANUFACTURED HOUSING

I. IN GENERAL

- §1. Generally
- §2. Obligation of the manufacturers and dealers
- §3. Jurisdiction and powers of Federal authorities
- §4. Jurisdiction and powers of the State Commission
- §5. Reports, records and statements

II. WHEN A PERMIT IS REQUIRED

- §6. When a permit is required generally
- §7. Operations and construction

III. GRANT OR REFUSAL OF A PERMIT

- §8. Grant or refusal generally
- §9. Restrictions or conditions
- §10. Who may possess
- §11. Public safety

IV. OPERATION, TRANSFER, REVOCATION OR CANCELLATION

- §12. Operations under the permit generally
- §13. Duration of the permit
- §14. Modification and amendment of the permit generally
- §15. Transfer, mortgage or lease generally
- §16. Revocation, cancellation and forfeiture generally
- §17. Acts or omissions justifying revocation or forfeiture
- §18. Necessity of action by the Commission
- §19. Penalties

MANUFACTURED HOUSING

No headnotes in this volume involved the question of Manufactured Housing.

PUBLIC UTILITIES

I. IN GENERAL

- §1. Generally
- §2. Nature of
- §3. Functions and powers
- §4. Termination of status
- §5. Obligation of the utility

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers generally
- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

III. FACTORS AFFECTING PUBLIC UTILITY CHARACTER

- §10. Tests in general
- §11. Franchises
- §12. Charters
- §13. Acquisition of public utility property
- §14. Compensation or profit
- §15. Eminent domain
- §16. Property sold or leased to a public utility
- §17. Restrictions on service, extent of use
- §18. Size of business
- §19. Solicitation of business
- §20. Submission to regulation
- §21. Sale of surplus
- §22. Use of streets or public places

IV. PARTICULAR ORGANIZATIONS-PUBLIC UTILITY CHARACTER

- §23. Particular organizations generally
- §24. Municipal plants
- §25. Municipal districts
- §26. Mutual companies; cooperatives
- §27. Corporations
- §28. Foreign corporations or companies
- §29. Unincorporated companies
- §30. State or federally owned or operated utility
- §31. Trustees

PUBLIC UTILITIES

No headnotes in this volume involved the question of public utilities.

RATES

I. JURISDICTION AND POWERS

- §1. Jurisdiction and powers generally
- §2. Jurisdiction and powers of Federal Commissions
- §3. Jurisdiction and powers of the State Commission
- §4. Jurisdiction and powers of the courts
- §5. Jurisdiction and powers of local authorities
- §6. Limitations on jurisdiction and power
- §7. Obligation of the utility

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

- §8. Reasonableness generally
- §9. Right of utility to accept less than a reasonable rate
- §10. Ability to pay
- §11. Breach of contract
- §12. Capitalization and security prices
- §13. Character of the service
- §14. Temporary or emergency
- §15. Classification of customers
- §16. Comparisons
- §17. Competition
- §18. Consolidation or sale
- §19. Contract or franchise rate
- §20. Costs and expenses
- §21. Discrimination, partiality, or unfairness
- §22. Economic conditions
- §23. Efficiency of operation and management
- §24. Exemptions
- §25. Former rates; extent of change
- §26. Future prospects
- §27. Intercompany relations
- §28. Large consumption
- §29. Liability of utility
- §30. Location
- §31. Maintenance of service
- §32. Ownership of facilities
- §33. Losses or profits
- §34. Effects on patronage and use of the service
- §35. Patron's profit from use of service
- §36. Public or industrial use
- §37. Refund and/or reduction
- §38. Reliance on rates by patrons
- §39. Restriction of service
- §40. Revenues
- §41. Return
- §42. Seasonal or irregular use
- §43. Substitute service

- §44. Taxes
- §45. Uniformity
- §46. Value of service
- §47. Value of cost of the property
- §48. Violation of law or orders
- §49. Voluntary rates
- §50. What the traffic will bear
- §51. Wishes of the utility or patrons

III. CONTRACTS AND FRANCHISES

- §52. Contracts and franchises generally
- §53. Validity of rate contract
- §54. Filing and Commission approval
- §55. Changing or terminating-contract rates
- §56. Franchise or public contract rates
- §57. Rates after expiration of franchise
- §58. Effect of filing new rates
- §59. Changes by action of the Commission
- §60. Changes or termination of franchise or public contract rate
- §61. Restoration after change

IV. SCHEDULES, FORMALITIES AND PROCEDURE RELATING TO

- §62. Initiation of rates and rate changes
- §63. Proper rates when existing rates are declared illegal
- §64. Reduction of rates
- §65. Refunds
- §66. Filing of schedules reports and records
- §67. Publication and notice
- §68. Establishment of rate base
- §69. Approval or rejection by the Commission
- §70. Legality pending Commission action
- §71. Suspension
- §72. Effective date
- §73. Period for which effective
- §74. Retroactive rates
- §75. Deviation from schedules
- §76. Form and contents
- §77. Billing methods and practices
- §78. Optional rate schedules
- §79. Test or trial rates

V. KINDS AND FORMS OF RATES AND CHARGES

- §80. Kinds and forms of rates and charges in general
- §81. Surcharges
- §82. Uniformity of structure
- §83. Cost elements involved
- §84. Load, diversity and other factors
- §85. Flat rates and charges

- §86. Mileage charges
- §87. Zone rates
- §88. Transition from flat to meter
- §89. Straight, block or step-generally
- §90. Contract or franchise requirement
- §91. Two-part rate combinations
- §92. Charter, contract, statutory, or franchise restrictions
- §93. Demand charge
- §94. Initial charge
- §95. Meter rental
- §96. Minimum bill or charge
- §97. Maximum charge or rate
- §98. Wholesale rates
- §99. Charge when service not used; discontinuance
- §100. Variable rates based on costs-generally
- §101. Fuel clauses
- §102. Installation, connection and disconnection charges
- §103. Charges to short time users

VI. RATES AND CHARGES OF PARTICULAR UTILITIES

- §104. Electric and power
- §105. Demand, load and related factors
- §106. Special charges; amount and computation
- §107. Kinds and classes of service
- §108. Gas
- §109. Heating
- §110. Telecommunications
- §111. Water
- §112. Sewers
- §113. Joint Municipal Utility Commissions

VII. EMERGENCY AND TEMPORARY RATES

- §114. Emergency and temporary rates generally
- §115. What constitutes an emergency
- §116. Prices
- §117. Burden of proof to show emergencies

VIII. RATE DESIGN, CLASS COST OF SERVICE

- §118. Method of allocating costs
- §119. Rate design, class cost of service for electric utilities
- §120. Rate design, class cost of service for gas utilities
- §121. Rate design, class cost of service for water utilities
- §122. Rate design, class cost of service for sewer utilities
- §123. Rate design, class cost of service for telecommunications utilities
- §124. Rate design, class cost of service for heating utilities

RATES

§15. Classification of customers

The Commission ordered the filing of tariffs that established a low-income class of customers eligible for a discounted rate. WR-2015-0301 **26 MPSC 3d 172**

§23. Efficiency of operation and management

The Commission approved programs under the Missouri Energy Efficiency Initiative, including a custom rebate program, with variances from the Commission's regulations for terminating programs. EO-2015-0240 & EO-2015-0241 **26 MPSC 3d 35**

§25. Former rates; extent of change

As to sewer service and water service, the Commission's authority to order a phase-in of new rates is uncertain. WR-2016-0064 **26 MPSC 3d 229**

§45. Uniformity

Pricing among districts need not be uniform, and need not be district-specific; consolidation of some districts and not others for rate-setting does not offend the statutory ban against undue discrimination. WR-2015-0301 **26 MPSC 3d 172**

§81. Surcharges

The Commission could grant an application for an infrastructure replacement surcharge that did not include exact cost amounts when the applicant filed documentation supporting those amounts in time for the other parties to review them. GO-2016-0196 & GO-2016-0197 **26 MPSC 3d 147**

§89. Straight, block or step-generally

In setting a volumetric charge, the Commission encouraged conservation by rejecting declining block rates, and imposed a one-block volumetric rate in all districts for all classes.

WR-2015-0301 **26 MPSC 3d 172**

SECURITY ISSUES

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Authorization by a corporation
- §4. Conversion, redemption and purchase by a corporation
- §5. Decrease of capitalization
- §6. Sinking funds
- §7. Dividends
- §8. Revocation and suspension of Commission authorization
- §9. Fees and expenses
- §10. Purchase by utility
- §11. Accounting practices

II. JURISDICTION AND POWERS

- §12. Jurisdiction and powers in general
- §13. Jurisdiction and powers of Federal Commissions
- §14. Jurisdiction and powers of the State Commission
- §15. Jurisdiction and powers of local authorities

III. NECESSITY OF AUTHORIZATION BY THE COMMISSION

- §16. Necessity of authorization by the Commission generally
- §17. Installment contracts
- §18. Refunding or exchange of securities
- §19. Securities covering utility and nonutility property
- §20. Securities covering properties outside the State

IV. FACTORS AFFECTING AUTHORIZATION

- §21. Factors affecting authorization generally
- §21.1. Effect on bond rating
- §22. Equity capital
- §23. Charters

- §24. Competition
- §25. Compliance with the terms of a mortgage or lease
- §26. Definite plans and purposes
- §27. Financial conditions and prospects
- §28. Use of proceeds
- §29. Dividends and dividend restrictions
- §30. Improper practices and irregularities
- §31. Intercompany relations
- §32. Necessity of issuance
- §33. Revenue
- §34. Rates and rate base
- §35. Size of the company
- §36. Title of property
- §37. Amount
- §38. Kind of security
- §39. Restrictions imposed by the security

V. PURPOSES AND SUBJECTS OF CAPITALIZATION

- §40. Purposes and subjects of capitalization generally
- §41. Additions and betterments
- §42. Appreciation or full plant value
- §43. Compensation for services and stockholders' contributions
- §44. Deficits and losses
- §45. Depreciation funds and requirements
- §46. Financing costs
- §47. Intangible property
- §48. Going value and good will
- §49. Stock dividends
- §50. Loans to affiliated interests
- §51. Overhead
- §52. Profits
- §53. Refunding, exchange and conversion
- §54. Reimbursement of treasury
- §55. Renewals, replacements and reconstruction
- §56. Working capital

VI. KINDS AND PROPORTIONS

- §57. Bonds or stock
- §58. Common or preferred stock
- §59. Stock without par value
- §60. Short term notes
- §61. Proportions of stock, bonds and other security
- §62. Proportion of debt to net plant

VII. SALE PRICE AND INTEREST RATES

- §63. Sale price and interest rates generally
- §64. Bonds
- §65. Notes

- §66. Stock
- §67. Preferred stock
- §68. No par value stock

VIII. FINANCING METHODS AND PRACTICES

- §69. Financing methods and practices generally
- §70. Leases
- §71. Financing expense
- §72. Payment for securities
- §73. Prospectuses and advertising
- §74. Subscriptions and allotments
- §75. Stipulation as to rate base

IX. PARTICULAR UTILITIES

- §76. Telecommunications
- §77. Electric and power
- §78. Gas
- §79. Sewer
- §80. Water
- §81. Miscellaneous

SECURITY ISSUES

§69. Financing methods and practices generally

Statute governing a public utility's issuance of securities restricts the use of proceeds from such financing to specified purposes, and requires the public utility to set forth which of those specified purposes those proceeds will apply to.

Flexibility to use the financing for unspecified purposes is not a statutorily specified purpose. **GF-2015-0181 26 MPSC 3d 15**

SERVICE

I. IN GENERAL

- §1. Generally
- §2. What constitutes adequate service
- §3. Obligation of the utility
- §4. Abandonment, discontinuance and refusal of service
- §5. Contract, charter, franchise and ordinance provisions
- §6. Restoration or continuation of service

- §7. Substitution of service
- §7.1. Change of supplier
- §8. Discrimination

II. JURISDICTION AND POWERS

- §9. Jurisdiction and powers generally
- §10. Jurisdiction and powers of the Federal Commissions
- §11. Jurisdiction and powers of the State Commission
- §12. Jurisdiction and powers over service outside of the state
- §13. Jurisdiction and powers of the courts
- §14. Jurisdiction and powers of local authorities
- §15. Limitations on jurisdiction
- §16. Enforcement of duty to serve

III. DUTY TO SERVE

- §17. Duty to serve in general
- §18. Duty to render adequate service
- §19. Extent of profession of service
- §20. Duty to serve as affected by contract
- §21. Duty to serve as affected by charter, franchise or ordinance
- §22. Duty to serve persons who are not patrons
- §23. Reasons for failure or refusal to serve
- §24. Duty to serve as affected by inadequate revenue

IV. OPERATIONS

- §25. Operations generally
- §26. Extensions
- §27. Trial or experimental operation
- §28. Consent of local authorities
- §29. Service area
- §30. Rate of return
- §31. Rules and regulations
- §32. Use and ownership of property
- §33. Hours of service
- §34. Restriction on service
- §35. Management and operation
- §36. Maintenance
- §37. Equipment
- §38. Standard service
- §39. Noncontinuous service

V. SERVICE BY PARTICULAR UTILITIES

- §40. Gas
- §41. Electric and power
- §42. Heating
- §43. Water
- §44. Sewer

§45. Telecommunications

VI. CONNECTIONS, INSTRUMENTS AND EQUIPMENT

- §46. Connections, instruments and equipment in general**
- §47. Duty to install, own and maintain**
- §48. Protection, location and liability for damage**
- §49. Restriction and control of connections, instruments and equipment**

SERVICE

§48. Protection, location and liability for damage

Complainant did not carry her burden of proving that telecommunications landline's signal converted into electric discharges that harmed her while using her telephone. IC-2015-0286 **26 MPSC 3d 269**

SEWER

I. IN GENERAL

- §1. Generally**
- §2. Certificate of convenience and necessity**
- §3. Obligation of the utility**
- §4. Transfer, lease and sale**

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally**
- §6. Jurisdiction and powers of the Federal Commissions**
- §7. Jurisdiction and powers of the State Commission**
- §8. Jurisdiction and powers of local authorities**
- §9. Territorial agreements**

III. OPERATIONS

- §10. Operation generally**
- §11. Construction and equipment**
- §12. Maintenance**
- §13. Additions and betterments**
- §14. Rates and revenues**
- §15. Return**

- §16. Costs and expenses
- §17. Service
- §18. Depreciation
- §19. Discrimination
- §20. Apportionment
- §21. Accounting
- §22. Valuation
- §23. Extensions
- §24. Abandonment or discontinuance
- §25. Reports, records and statements
- §26. Financing practices
- §27. Security issues
- §28. Rules and regulations
- §29. Billing practices
- §30. Eminent domain
- §31. Accounting Authority orders

SEWER

§12. Maintenance

The Commission rejected a proposal for a specific valve maintenance program because the proponent did not show that the current practice was less than safe and adequate. WR-2015-0301 **26 MPSC 3d 172**

§19. Discrimination

Pricing among districts need not be uniform, and need not be district-specific; consolidation of some districts and not others for rate-setting does not offend the statutory ban against undue discrimination. WR-2015-0301 **26 MPSC 3d 172**

STEAM

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §4. Transfer, lease and sale

- §4.1. Change of suppliers
- §5. Charters and franchise
- §6. Territorial agreements

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers generally
- §8. Jurisdiction and powers of Federal Commissions
- §9. Jurisdiction and powers of the State Commission
- §10. Jurisdiction and powers of the local authorities
- §11. Territorial agreements
- §12. Unregulated service agreements

III. OPERATIONS

- §13. Operations generally
- §14. Rules and regulations
- §15. Cooperatives
- §16. Public corporations
- §17. Abandonment and discontinuance
- §18. Depreciation
- §19. Discrimination
- §20. Rates
- §21. Refunds
- §22. Revenue
- §23. Return
- §24. Services generally
- §25. Competition
- §26. Valuation
- §27. Accounting
- §28. Apportionment
- §29. Rate of return
- §30. Construction
- §31. Equipment
- §32. Safety
- §33. Maintenance
- §34. Additions and betterments
- §35. Extensions
- §36. Local service
- §37. Liability for damage
- §38. Financing practices
- §39. Costs and expenses
- §40. Reports, records and statements
- §41. Billing practices
- §42. Planning and management
- §43. Accounting Authority orders
- §44. Safety
- §45. Decommissioning costs

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §46. Relations between connecting companies generally
- §47. Physical connection
- §48. Contracts
- §49. Records and statements

STEAM

No headnotes in this volume involved the question of steam.

TELECOMMUNICATIONS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §3.1. Certificate of local exchange service authority
- §3.2. Certificate of interexchange service authority
- §3.3. Certificate of basic local exchange service authority
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers of local authorities
- §6. Jurisdiction and powers of Federal Commissions
- §7. Jurisdiction and powers of the State Commission

III. OPERATIONS

- §8. Operations generally
- §9. Public corporations
- §10. Abandonment or discontinuance
- §11. Depreciation
- §12. Discrimination
- §13. Costs and expenses
- §13.1. Yellow Pages
- §14. Rates
- §14.1. Universal Service Fund
- §15. Establishment of a rate base
- §16. Revenue
- §17. Valuation
- §18. Accounting
- §19. Financing practices
- §20. Return

- §21. Construction
- §22. Maintenance
- §23. Rules and regulations
- §24. Equipment
- §25. Additions and betterments
- §26. Service generally
- §27. Invasion of adjacent service area
- §28. Extensions
- §29. Local service
- §30. Calling scope
- §31. Long distance service
- §32. Reports, records and statements
- §33. Billing practices
- §34. Pricing policies
- §35. Accounting Authority orders

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §36. Relations between connecting companies generally
- §37. Physical connection
- §38. Contracts
- §39. Division of revenue, expenses, etc.

V. ALTERNATIVE REGULATION AND COMPETITION

- §40. Classification of company or service as noncompetitive, transitionally , or competitive
- §41. Incentive regulation plans
- §42. Rate bands
- §43. Waiver of statutes and rules
- §44. Network modernization
- §45. Local exchange competition
- §46. Interconnection Agreements
- §46.1 Interconnection Agreements-Arbitrated
- §47. Price Cap

TELECOMMUNICATIONS

§7. Jurisdiction and powers of the State Commission

For membership on the Missouri Relay Advisory Committee, the Commission voted to appoint a new member to the Hearing position, and extend a current member's existing appointment to the Speech Impaired position for a second three-year term. TO-2016-0180 **26 MPSC 3d 1**

VALUATION

I. IN GENERAL

- §1. Generally**
- §2. Constitutional limitations**
- §3. Necessity for**
- §4. Obligation of the utility**

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally**
- §6. Jurisdiction and powers of the State Commission**
- §7. Jurisdiction and powers of the Federal Commissions**
- §8. Jurisdiction and powers of local authorities**

III. METHODS OR THEORIES OF VALUATION

- §9. Methods or theories generally**
- §10. Purpose of valuation as a factor**
- §11. Rule, formula or judgment as a guide**
- §12. Permanent and tentative valuation**

IV. ASCERTAINMENT OF VALUE

- §13. Ascertainment of value generally**
- §14. For rate making purposes**
- §15. Purchase or sale price**
- §16. For issuing securities**

V. FACTORS AFFECTING VALUE OR COST

- §17. Factors affecting value or cost generally**
- §18. Contributions from customers**
- §19. Appreciation**
- §20. Apportionment of investment or costs**
- §21. Experimental or testing cost**
- §22. Financing costs**
- §23. Intercompany relationships**
- §24. Organization and promotion costs**
- §25. Discounts on securities**
- §26. Property not used or useful**
- §27. Overheads in general**
- §28. Direct labor**
- §29. Material overheads**
- §30. Accidents and damages**
- §31. Engineering and superintendence**
- §32. Preliminary and design**
- §33. Interest during construction**
- §34. Insurance during construction**
- §35. Taxes during construction**
- §36. Contingencies and omissions**

- §37. Contractor's profit and loss
- §38. Administrative expense
- §39. Legal expense
- §40. Promotion expense
- §41. Miscellaneous

VI. VALUATION OF TANGIBLE PROPERTY

- §42. Buildings and structures
- §43. Equipment and facilities
- §44. Land
- §45. Materials and supplies
- §46. Second-hand property
- §47. Property not used and useful

VII. VALUATION OF INTANGIBLE PROPERTY

- §48. Good will
- §49. Going value
- §50. Contracts
- §51. Equity of redemption
- §52. Franchises
- §53. Leases and leaseholds
- §54. Certificates and permits
- §55. Rights of way and easements
- §56. Water rights

VIII. WORKING CAPITAL

- §57. Working capital generally
- §58. Necessity of allowance
- §59. Factors affecting allowance
- §60. Billing and payment for service
- §61. Cash on hand
- §62. Customers' deposit
- §63. Expenses or revenues
- §64. Prepaid expenses
- §65. Materials and supplies
- §66. Amount to be allowed
- §67. Property not used or useful

IX. DEPRECIATION

- §68. Deprecation generally
- §69. Necessity of deduction for depreciation
- §70. Factors affecting propriety thereof
- §71. Methods of establishing rates or amounts
- §72. Property subject to depreciation
- §73. Deduction or addition of funds or reserve

X. VALUATION OF PARTICULAR UTILITIES

- §74. Electric and power
- §75. Gas
- §76. Heating
- §77. Telecommunications
- §78. Water
- §79. Sewer

VALUATION

No headnotes in this volume involved the question of valuation.

WATER**I. IN GENERAL**

- §1. Generally
- §2. Certificate of convenience and necessity
- §3. Obligation of the utility
- §4. Transfer, lease and sale
- §5. Joint Municipal Utility Commissions

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers generally
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of the State Commission
- §9. Jurisdiction and powers of local authorities
- §10. Receivership
- §11. Territorial Agreements

III. OPERATIONS

- §12. Operation generally
- §13. Construction and equipment
- §14. Maintenance
- §15. Additions and betterments
- §16. Rates and revenues
- §17. Return
- §18. Costs and expenses
- §19. Service
- §20. Depreciation
- §21. Discrimination
- §22. Apportionment
- §23. Accounting
- §24. Valuation
- §25. Extensions
- §26. Abandonment or discontinuance

- §27. Reports, records and statements
 - §28. Financing practices
 - §29. Security issues
 - §30. Rules and regulations
 - §31. Billing practices
 - §32. Accounting Authority orders
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WATER

§2. Certificate of convenience and necessity

The Commission granted applications for a water company to transfer its assets, for a buyer to operate a water company, and for the buyer to encumber the assets as collateral for financing to improve service, subject to conditions related to contracting for services, accounting, and recordkeeping. WO-2016-0045 **26 MPSC 3d 4**

§14. Maintenance

The Commission rejected a proposal for a specific valve maintenance program because the proponent did not show that the current practice was less than safe and adequate. WR-2015-0301 **26 MPSC 3d 172**

§21. Discrimination

Pricing among districts need not be uniform, and need not be district-specific; consolidation of some districts and not others for rate-setting does not offend the statutory ban against undue discrimination. WR-2015-0301 **26 MPSC 3d 172**
